NTEZIRYAYO v. RUTABAYIRO

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0003/13/CS (Mutashya P.J., Rugabirwa na Hitiyiramye, J.) 31 Mutarama 2014]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Ubujurire bwuririye ku bundi – Ubujurire bwuririye ku bundi burakirwa n' igihe uregwa yamenyeshejwe urabanza rwe ntagaragaze ko hari icyo arukemangaho – Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'ubutegetsi n'iz'umurimo, ingingo ya 167.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Agaciro k'amasezerano y'ubugure bw'umutungo utimukanwa mu gihe hatarakorwa ihinduzamutungo – Kutubahiriza amasezerano – Indishyi ku gihombo umuguzi yatewe n'uko umugurisha atubahirije inshingano yo kumushyikiriza inyandiko z'icyo yaguze mu gihe bumvikanyeho – Amasezerano y'ubugure aba yuzuye igihe abayagiranye bumvikanye ku kintu no ku giciro cyacyo n'ubwo ikigurishwa kitari cyatangwa n'ikiguzi cyacyo kikaba kitari cyishyurwa – Umugurisha agomba gutegekwa gutanga indishyi iyo umuguzi yagize igihombo gituruka ku kudashyikirizwa icyo yaguze mu gihe cyumvikanweho – Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano imirimo nshinganwa, ingingo ya 33, 264 na 288.

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Gushorwa mu manza – Nta ndishyi bitangirwa mu gihe uwajuriye hari ibyo yatsindiye.

Incamake y'ikibazo: Nteziryayo yagiranye na Rutabayiro amasezerano y'ubugure bw'ikibanza kirimo inzu eshanu na "annexes", hanyuma Rutabayiro amwishyura amafaranga make bumvikana ko asigaye yose azayamuha ari uko amuhaye ibyangombwa by' inzu bigizwe n'icyangombwa cyerekana ubuso bw'ikibanza, amasezerano y'ubukode bw'ikibanza n' uruhushya rwo kubaka; yagombaga gushaka mu gihe cy'ukwezi kumwe kandi ko nikurenga bitaraboneka impande zombi zizicarana kugira ngo zirebere hamwe igihe bizabonekera.

Nteziryayo yasabye ibyo byangombwa mu buyobozi bw'Akarere ntiyabihabwa kuko aho inzu ziherereye hari hatarakorerwa igishushanyo mbonera, hagati aho atangira gusana izo nzu ngo kuko yabonaga zirimo kwangirika. Rutabayiro abonye ko Nteziryayo atangiye kuzisana yamureze mu Rukiko Rwisumbuye rwa Gasabo asaba ko habaho ihinduzamutungo (mutation) kugira ngo izo nzu zimwandikweho, kandi anasaba indishyi zinyuranye. Urwo Rukiko rwemeje ko Nteziryayo agomba kwegurira Rutabayiro inzu nawe akamwishyura amafaranga yamusigayemo hamwe n'amafaranga y'agaciro kiyongereyeho kandi Nteziryayo akamuha ay'ikurikiranarubanza n'igihembo cy'Avoka.

Rutabayiro yajuriye Urukiko Rukuru maze Nteziryayo nawe atanga ubujurire bwuririye ku bundi asaba ko amasezerano aseswa; rwemeza ko habaho ihinduzamutungo (mutation) hagati ye na Nteziryayo, naho ubujurire bwa Nteziryayo bwuririye ku bundi busaba iseswa ry'amasezerano butakiriwe kubera ko iseswa ry'amasezerano asaba ritagamije kwiregura ku kirego cy'iremezo.

Byatumye Nteziryayo ajuririra Urukiko rw'Ikirenga avuga ko amasezerano y'ubugure yakoranye na Rutabayiro yaseswa, cyangwa se bitashoboka akamuha amafaranga y'agaciro kiyongereyeho avugurura izo nzu hamwe n'ayo yari yaramusigayemo n'indishyi zinyuranye. Rutabayiro nawe avuga ko ubujurire bwa Nteziryayo budakwiye kwakirwa ngo busuzumwe

kuko butagamije kwiregura ku kirego cy'iremezo ko kandi hakwiye kubaho ihinduzamutungo hagati ye na Nteziryayo, akanamuha indishyi zinyuranye.

Incamake y'icyemezo: 1. Ubujurire bwuririye ku bundi bukwiye kwakirwa hagasuzumwa ishingiro ryabwo kuko uregwa mu Rukiko rujuririrwa ashobora nawe kujurira yuririye ku bujurire bw'urega mbere y'iburanisha cyangwa mu iburanisha, n'aho yaba yaramenyeshejwe urubanza rwe ntagaragaze ko hari icyo arukemangaho.

2. Amasezerano y'ubugure aba yuzuye igihe abayagiranye bumvikanye ku kintu no ku giciro cyacyo n'ubwo ikigurishwa kitari cyatangwa n'ikiguzi cyacyo kikaba kitari cyishyurwa kandi agomba kubahirizwa nta buryarya bityo hakaba hagomba kuba ihinduzamutungo hagati ya Nteziryayo na Rutabayiro, hanyuma Rutabayiro nawe akamwishyura amafaranga yamusigayemo ku kiguzi hamwe na kimwe cya kabiri cy'agaciro kiyongereyeho hasanwa izo nzu.

3. Umugurisha agomba gutegekwa gutanga indishyi iyo umuguzi yagize igihombo gituruka ku kudashyikirizwa icyo yaguze mu gihe cyumvikanyweho.

4. Mu gihe uwajuriye hari ibyo yatsindiye, uregwa ntiyahabwa indishyi zo gushorwa mu manza ku maherere.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi nta shingiro bufite kuri bimwe.
Amagarama y'urubanza aherereye ku wajuriye.

Amategeko yashingiweho:
Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'ubutegetsi n'iz'umurimo, ingingo 167.
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo za 33, 264 na 288.

Nta manza zifashishijwe.

Ibitekerezo by'abahanga byifashishijwe:
Laurent C., Vente d'immeuble: un contrat parfait par le seul accord sur la chose et le prix, article publié le 25/10/2011.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 15/03/2010, Nteziryayo Eric yagiranye na Rutabayiro Eric amasezerano y'ubugure bw'ikibanza kirimo amazu atanu na "annexes" biherereye mu Mudugudu wa Rusenyi, Akagari ka Murama, Umurenge wa Kinyinya, mu Karere ka Gasabo ku giciro kingana na 30.000.000 Frw. Rutabayiro Eric yahise yishyura Nteziryayo Eric 7.000.000 Frw, bumvikana ko 23.000.000 Frw asigaye, Rutabayiro Eric azayamuha ari uko Nteziryayo Eric amuhaye ibyangombwa bigizwe na "fiche cadastrale", "contrat de location" na "autorisation de bâtir" azashaka mu gihe cy'ukwezi kumwe, ko nikurenga bitaraboneka, impande zombi zizicarana kugira ngo zirebere hamwe igihe bizabonekera.

[2] Rutabayiro Eric abonye ko Nteziryayo Eric atamuhaye ibyangombwa byavuzwe haruguru, kandi atangiye kuvugurura amazu yamugurishije, yamureze mu Rukiko Rwisumbuye rwa Gasabo, asaba ko habaho ihinduzamutungo (mutation) kugira ngo ayo mazu amwandikweho, akanamuha n'indishyi zinyuranye. Nteziryayo nawe yatanze ikirego kiregera kwiregura asaba ko ayo masezerano yaseswa.

[3] Urwo Rukiko rwemeje ko Nteziryayo Eric agomba kwegurira Rutabayiro Eric inzu yaguze, nawe akamwishyura 23.000.000 Frw yamusigayemo. Rwemeje kandi ko ikirego kiregera kwiregura cyatanzwe na Nteziryayo gisaba iseswa ry'amasezerano nta shingiro gifite kubera ko kitagamije kwiregura ku kirego cy'iremezo, rutegeka Rutabayiro guha Nteziryayo 95.126.105 Frw ahwanye n'agaciro kiyongereye, rutegeka Nteziryayo Eric guha Rutabayiro Eric 500.000 Frw y'ikurikiranarubanza n'igihembo cya avoka.

[4] Rutabayiro Eric yajuririye Urukiko Rukuru rwemeza ko habaho ihinduzamutungo (mutation) hagati ye na Nteziryayo Eric, ko ubujurire bwa Nteziryayo bwuririye ku bundi busaba iseswa ry'amasezerano butakiriwe kubera ko iseswa ry'amasezerano asaba ritagamije kwiregura ku kirego cy'iremezo kijyanye n'uko "mutation" yakorwa hagati ye na Rutabayiro Eric. Rwemeje kandi ko urubanza rwajuririwe ruhindutse mu ngingo zarwo zose, uretse ku bijyanye na 500.000 Frw y'ikurikiranarubanza n'igihembo cya avoka, Rutabayiro Eric yagenewe ku rwego rwa mbere.

[5] Nteziryayo Eric yajuririye Urukiko rw'Ikirenga avuga ko amasezerano y'ubugure yagiranye na Rutabayiro Eric yaseswa kuko yabuze ibyangombwa byavuzwe haruguru, ko mu gihe adasheshwe, Rutabayiro Eric yamusubiza 95.126.105 Frw yakoresheje mu kuvugurura amazu akanamuha 23.000.000 Frw yamusigayemo hiyongereyeho indishyi zinyuranye. Rutabayiro Eric nawe avuga ko hakwiye kubaho ihinduzamutungo (mutation) hagati ye na Nteziryayo Eric, ko kandi akwiye kumuha indishyi zinyuranye.

[6] Urubanza rwaburanishijwe mu ruhame kuwa 17/12/2013, Nteziryayo Eric ahagarariwe na Me Mutabazi Abayo Claude, naho Rutabayiro Eric ahagarariwe Me Nzirabatinyi Fidèle.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ubujurire bwuririye ku bundi bwatanzwe na Nteziryayo Eric bukwiye kwakirwa

[7] Uburanira Nteziryayo Eric avuga ko Urukiko rw'Ikirenga rukwiye kwakira ubujurire bwe bwuririye ku bundi kugira ngo ruteshe agaciro amasezerano y'ubugure yavuzwe haruguru kubera ko Urukiko Rukuru rwanze kubwakira ruvuga ko ikirego kiregera kwiregura yatanze mu Rukiko Rwisumbuye rwa Gasabo kitagombaga kwakirwa kubera ko iseswa ry'amasezerano yasabaga ritagamije kwiregura ku ihinduzamutungo (mutation) riburanwa mu kirego cy'iremezo, ariko ko rwirengagije ko bwagombaga kwakirwa kuko bwari bwaratanzwe mu buryo bukurikije amategeko.

[8] Uburanira Rutabayiro Eric avuga ko ubujurire bwuririye ku bundi bwa Nteziryayo butagomba kwakirwa kubera ko iseswa ry'amasezerano y'ubugure yasabaga mu kirego kiregera kwiregura yatanze mu Rukiko rwabanje ritari rigamije kwiregura ku kirego cy'iremezo cyari kigamije gusaba ko habaho ihinduzamutungo (mutation) hagati ye na Nteziryayo Eric.

UKO URUKIKO RUBIBONA

[9] Ku byerekeye ubujurire bwuririye ku bundi, ingingo ya 167 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'ubutegetsi n'iz'umurimo ryakurikizwaga igihe amasezerano y'ubugure yakorwaga, iteganya ko "Uregwa mu Rukiko rujuririrwa ashobora nawe kujurira yuririye ku bujurire bw'urega mbere y'iburanisha cyangwa mu iburanisha, n'aho yaba yaramenyeshejwe urubanza rwe ntagaragaze ko hari icyo arukemangaho".

[10] Umwanzuro Nteziryayo Eric yashyikirije Urukiko Rukuru uri kuri kote ya 46 n'imiburanire ye muri urwo Rukiko, bigaragaza ko yatanze ubujurire bwuririye ku bundi asaba ko amasezerano y'ubugure yavuzwe haruguru yaseswa kubera ko Akarere ka Gasabo kamubwiye ko katazamuha ibyangombwa yasabye kubera ko aho amazu ye aherereye hatarakorerwa igishushanyo mbonera.

[11] Hakurikijwe ibiteganywa n'ingingo ya 167 y'Itegeko ryavuzwe haruguru, Urukiko rurasanga, Urukiko Rukuru rwaragombaga kwakira ubujurire bwuririye ku bundi bwatanzwe na Nteziryayo Eric kubera ko bwatanzwe mu buryo buteganywa n'amategeko, bityo bukaba bugomba kwakirwa muri uru Rukiko kugira ngo hasuzumwe ishingiro ryabwo.

2. Kumenya niba amasezerano y'ubugure yabaye hagati ya Nteziryayo Eric na Rutabayiro Eric kuwa 15/03/2010 yuzuye n'inkurikizi zayo

[12] Uburanira Nteziryayo Eric avuga ko Urukiko Rukuru rwemeje ko habaho ihinduzamutungo (mutation) hagati ye na Rutabayiro Eric, rwirengagiza ko amasezerano y'ubugure bagiranye kuwa 15/03/2010 yarimo inkomyi nsesamasezerano (obligation conditionnelle) ijyanye n'uko Rutabayiro Eric yagombaga kumwishyura 23.000.000 Frw ari uko amuhaye "fiche cadastrale", "contrat de location" na "autorisation de bâtir", ariko ko atashoboye kubona ibyo byangombwa kubera ko Akarere ka Gasabo kamwandikiye ibaruwa yo kuwa 26/10/2011 kamubwira ko atazabona ibyagombwa yasabye mu gihe igishushanyo mbonera kitarakorwa.

[13] Asobanura ko atagize uburiganya (mauvaise foi), kuko nyuma y'iminsi umunani (8) amasezerano y'ubugure akozwe, Nteziryayo Eric yahise yandikira Akarere ka Gasabo kuwa 23/03/2010 asaba ko kamuha ibyagombwa byavuzwe haruguru, kamusubiza ko katabimuha kubera ko hatarakorwa igishushanyo mbonera, asaba Rutabayiro ko yamusubiza 7.000.000 Frw yamuhaye, bagasesa amasezerano kuko yabonaga ubugure butagishobotse, arabyanga, ko kandi yasabye Rutabayiro ko yamuha 23.000.000 Frw yamusigayemo akabyishakira, nabwo arabyanga, bituma Nteziryayo ajya gusaba icyagombwa cyo gusana amazu kubera ko yabonaga amazu agiye kumugwaho bitewe n'uko yavaga, ko rero ayo masezerano akwiye guseswa kuko adashobora gushyirwa mu bikorwa nk'uko biteganywa n'ingingo ya 70 CCLIII[1] kubera ko yabuze ibyangombwa byavuzwe haruguru.

[14] Uburanira Rutabayiro Eric avuga ko amasezerano y'ubugure yavuzwe haruguru ataseswa, ko ahubwo Urukiko rwategeka ko habaho ihinduzamutungo (mutation) hagati ye na Nteziryayo Eric kugira ngo amazu yaguze amwandikweho, ko kandi Nteziryayo Eric yagize uburiganya (mauvaise foi) kuko yavuguruye amazu azi neza ko yayamugurishije.

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[1]Iyo ngingo ivuga ko "Inkomyi yose ishingiye ku kintu kidashoboka, cyangwa kinyuranyije n'umuco mbonezabupfura, cyangwa kibujijwe n'amategeko, ntigira agaciro kandi itesha agaciro amasezerano ayishingiyeho".

UKO URUKIKO RUBIBONA

[15] Ku bijyanye n'agaciro k'amasezerano, ingingo ya 33 y'igitabo cy'urwunge rw'amategeko y'imbonezamubano yerekeye imirimo nshinganwa cyangwa amasezerano yakurikizwaga igihe amasezerano y'ubugure yakorwaga, ivuga ko "*Amasezerano akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buryarya"*[2].

[16] Ingingo ya 264 y'igitabo kimaze kuvugwa haruguru, ivuga ko "Igurisha riba ryuzuye hagati y'abagiranye amasezerano, kandi umugurisha akegurira burundu umuguzi icyagurishijwe mu gihe bumvikanye ku kintu no ku giciro cyacyo n'ubwo ikigurishwa kitari cyatangwa n'ikiguzi cyacyo kikaba kitari cyishyurwa".

[17] Abahanga mu mategeko barimo Laurent Collon basobanura ko kuva kera Inkiko zagiye zemeza ko igurisha ry'umutungo utimukanwa (immeuble), riba ryuzuye mu gihe abagiranye amasezerano y'ubugure bumvikanye ku kintu no ku giciro, uretse ko bashobora no kwiyongereramo izindi nshingano[3].

[18] Ku birebana n'uru rubanza, amasezerano y'ubugure yo kuwa 15/03/2010, agaragaza ko Nteziryayo Eric yagurishije Rutabayiro Eric ikibanza cye kirimo amazu atanu na "annexes" biherereye mu Mudugudu wa Rusenyi, Akagari ka Murama, Umurenge wa Kinyinya, mu Karere ka Gasabo, ku gaciro kangana na 30.000.000 Frw, Rutabayiro Eric ahita amwishyura 7.000.000 Frw, bumvikana ko 23.000.000 Frw asigaye, azayamwishyura ari uko amuhaye "fiche cadastrale", "contrat de location" na "autorisation de bâtir", mu gihe kitarenze ukwezi kumwe, ko ukwezi nikurangira Nteziryayo Eric atarabibona, impande zombi zizicarana kugira ngo zirebere hamwe igihe bizabonekera.

[19] Hakurikijwe ibiteganywa n'ingingo z'amategeko n'ibisobanuro by'abahanga mu mategeko bimaze kuvugwa haruguru, Urukiko rurasanga amasezerano y'ubugure Nteziryayo Eric yagiranye na Rutabayiro Eric yavuzwe haruguru afite agaciro kuko bumvikanye ku mazu agurishwa no ku giciro cyayo, bityo akaba agomba kubahirizwa nta buryarya nk'uko biteganywa n'ingingo ya 33 y'igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano cyakurikizwaga igihe ayo masezerano yasinywaga.

[20] Ku byerekeranye n'ishyirwa mu bikorwa ry'ayo masezerano, inyandiko yo kuwa 23/03/2010, igaragaza ko Nteziryayo Eric yandikiye Akarere ka Gasabo asaba ko kamuha "fiche cadastrale", "contrat de location" na "autorisation de bâtir" by'ikibanza giherereye ahantu havuzwe haruguru, kamusubiza kuwa 26/10/2011 ko agomba gutegereza kubera ko ahantu asabira ibyangombwa hatarakorerwa igishushanyo mbonera (physical plan).

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[2]Iyo ngingo ihuje kandi n'ibivugwa mu ngingo ya 64 y'Itegeko n° 25/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ivuga ko "Amasezerano akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya".

[3]Durant de nombreuses années, les cours et tribunaux ont considéré que, même lorsqu'elle porte sur un bien immobilier, la vente est parfaite dès que l'on prouve que le consentement a porté sur la chose (le bien vendu/acquis) et le prix, toutes les autres conditions de la vente étant réputées accessoires, à moins que l'une et/ou l'autre partie ait érigé un ou plusieurs élément(s) au rang de condition (s) essentielles, comme la chose et le prix. Par Laurent Collon, *Vente d'immeuble un contrat parfait par le seul accord sur la chose et le prix*, article publié le 25/10/2011.

[21] Nyuma y'isinywa ry'ayo masezerano, Nteziryayo Eric ntiyagiye ngo yicecekere, ahubwo yihutiye gusaba ibyangombwa byavuzwe haruguru nk'uko bigaragazwa n'inyandiko ye yo kuwa 23/03/2010, kuba atarabibonye bikaba byaratewe n'uko yahuye n'icyemezo cy'Ubuyobozi atashoboraga kugira icyo agikoraho, cyane cyane ko atari azi igihe yagombaga kumara abitegereje. Ibyo bikaba byaratumye afata icyemezo kitari cyo cyo kujya gusaba icyemezo cyo gusana amazu, kuko mu bitekerezo bye yumvaga akiri nyiri uwo mutungo kubera ko wari ukimwanditseho, arayasana, ku buryo agaciro kayo kavuye kuri 30.000.000 Frw kakagera kuri 125.126.105 Frw nk'uko bigaragazwa na "expertise immobilière" yo kuwa 02/09/2011 yakozwe n'umuhanga mu by'ubwubatsi witwa Alain Bayavuge.

[22] Kuba Nteziryayo Eric yarakoze amakosa yo gusana ayo mazu atabanje kwegera Rutabayiro Eric kugira ngo barebere hamwe icyakorwa nk'uko bari barabyumvikanyeho mu masezerano bagiranye, kugeza n'aho Rutabayiro yamwihanangirije akanabimuhera integuza nk'uko bigaragazwa n'ibaruwa ye yo kuwa 18/05/2011, ndetse akaba yaranatambamiye n'ubugwate mu mabanki atandukanye nk'uko bigaragazwa n'ibaruwa yo kuwa 30/06/2012 bitewe n'uko yumvaga Nteziryayo ashobora kuyatangaho ubugwate muri Banki yitwaje ko ayo mazu yari akimwanditseho, Urukiko rurasanga Nteziryayo Eric ariwe utarubahirije amasezerano y'ubugure, bityo akaba agomba kuyubahiriza.

[23] Urukiko rurasanga nyamara ariko, agaciro amazu yari afite igihe amasezerano yasinywaga, kariyongereye nk'uko byagaragajwe mu gika cya 21, bityo mu kubahiriza ayo masezerano, Rutabayiro Eric akaba agomba mu bushishozi bw'Urukiko, guha Nteziryayo Eric kimwe cya kabiri cy'amafaranga yakoresheje asana ayo mazu ahwanye na $\frac{95.126.105\ \mathbf{Frw}}{2} = \mathbf{47.563.052\ Frw}$ kuko, kuba yakwegukana ayo mazu uko ameze ubu ntacyo atanze kandi agaciro kayo kariyongereye, kwaba ari ugusarura ibyo ataruhiye. Urukiko rurasanga kandi kuri ayo mafaranga, hagomba kwiyongeraho 23.000.000 Frw Rutabayiro Eric yasigayemo Nteziryayo Eric igihe bakoraga amasezerano y'ubugure, yose hamwe akaba $\mathbf{47.563.052\ Frw + 23.000.000\ Frw = 70.563.052\ Frw.}$

3. Ku byerekeye indishyi zisabwa muri uru rubanza

[24] Uburanira Nteziryayo Eric avuga ko mu gihe Urukiko rutegetse ko amasezerano y'ubugure asheshwe, rwategeka ko Nteziryayo Eric asubiza Rutabayiro Eric 7.000.000 Frw ya "avance" yamuhaye, rugategeka ko Rutabayiro amuha 10.000.000 Frw y'indishyi z'akababaro kubera ko yamushoye mu manza ku maherere, 5.000.000 Frw y'igihembo cy'abavoka babiri bamuburaniye na 300.000 Frw y'ikurikiranarubanza.

[25] Avuga kandi ko mu gihe Urukiko rwemeje ko amasezerano y'ubugure agumanye agaciro kayo, rwategeka ko Rutabayiro Eric amuha 95.126.105 Frw yatanze avugurura amazu nk'uko "expertise" iri muri dosiye ibigaragaza, akanamwishyura 23.000.000 Fw yamusigayemo, naho Nteziryayo Eric akamusubiza 7.000.000 Frw ya "avance" yamuhaye.

[26] Uburanira Rutabayiro Eric avuga ko atanze ubujurire bwuririye ku bundi asaba ko Nteziryayo Eric yamuha 150.000.000 Frw y'indishyi z'uko yatinze kumushyikiriza amazu yaguze hashingiwe ku ngingo ya 287 na 288 z'Igitabo cy'urwunge rw'amategeko y'imbonezamubano yerekeye imirimo nshinganwa cyangwa amasezerano cyakurikizwaga igihe amasezerano y'ubugure yakorwaga, na 5.000.000 Frw y'indishyi z'akababaro kubera ko yamushoye mu manza ku maherere, igihembo cy'avoka n'ay'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[27] Ku birebana n'indishyi z'akababaro zo kudahabwa amazu, ingingo ya 288 y'Igitabo cyavuzwe haruguru, ivuga ko "Ibyo aribyo byose, umugurisha agomba gutegekwa gutanga indishyi iyo umuguzi yagize igihombo gituruka ku kudashyikirizwa icyo yaguze mu gihe cyumvikanweho".

[28] Ku birebana n'uru rubanza, ikigaragara ni uko Rutabayiro Eric yahise yegukana amazu yaguze na Nteziryayo Eric kuva kuwa 15/03/2010, ariko kuba uyu atarahise ayamushyikiriza, ahubwo akaba yarayagundiriye mu gihe kirenga imyaka itatu n'amezi cumi, ni ukuvuga kuva kuwa 15/03/2010 kugeza kuwa 31/01/2014, umunsi w'icibwa ry'urubanza, bigaragara ko byateje Rutabayiro Eric igihombo kuko byatumye adahabwa ayo mazu hakiri kare kugira ngo ayatunge mu mudendezo, cyangwa ngo ayabyaze umusaruro, bityo Urukiko rurasanga Nteziryayo Eric agomba kubimuhera indishyi z'akababaro zigenwe mu bushishozi bwarwo zingana na 5.000.000 Frw kuko izo Rutabayiro Eric asaba zingana na 150.000.000 Frw ari ikirenga, kandi akaba atarazitangiye ibimenyetso ngo anagaragaze uko yazibaze.

[29] Ku bijyanye n'indishyi z'akababaro zo gushorwa mu manza ku maherere, kuba Nteziryayo Eric afite uburenganzira ahabwa n'amategeko bwo kujuririra imikirize y'urubanza atishimiye agamije kurenganurwa, bigaragara ko atashoye Rutabayiro Eric mu manza ku maherere, bityo Urukiko rurasanga Rutabayiro Eric atahabwa 5.000.000 Frw y'indishyi z'akababaro asaba zo gushorwa mu manza ku maherere, Nteziryayo Eric nawe akaba atagomba kuzihabwa kuko bigaragara ko Rutabayiro Eric atamushoye mu manza ku maherere bitewe n'uko hari ibyo yatsindiye.

[30] Ku byerekeranye n'amafaranga y'ikurikiranarubanza n'igihembo cy'avoka, Urukiko rurasanga kuba Rutabayiro Eric yari ahagarariwe muri uru Rukiko, kandi hakaba hari ibyo yatsindiye, bigaragara ko Nteziryayo Eric agomba kumuha 200.000 Frw y'ikurikiranarubanza na 300.000 Frw y'igihembo cya avoka yo kuri uru rwego agenwe mu bushishozi bwarwo yiyongera kuri 500.000 Frw y'ikurikiranarubanza n'igihembo cya avoka yagenewe n'Urukiko Rukuru, yose hamwe akaba 1.000.000 Frw.

[31] Hakoreshejwe uburyo bw'ihwanya ry'imyenda buteganywa n'ingingo ya 181 y'igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano cyavuzwe haruguru[4], Urukiko rurasanga Rutabayiro Eric agomba guha Nteziryayo Eric 70.563.052 Frw, Nteziryayo Eric nawe akamuha 5.000.000 Frw + 1.000.000 Frw, bivuga ko Rutabayiro Eric agomba guha Nteziryayo Eric 64.563.052 Frw (= 70.563.052 Frw - 5.000.000 Frw - 1.000.000 Frw), Nteziryayo Eric nawe akamwegurira ikibanza kirimo amazu atanu na "annexes" yaguze byavuzwe haruguru, hakanaba n'ihinduzamutungo (mutation) hagati yabo bombi.

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ubujurire bwa Nteziryayo Eric nta shingiro bufite kuri bimwe;

[33] Rwemeje ko ubujurire bwa Rutabayiro Eric bwuririye ku bundi bufite ishingiro;

[34] Rutegetse Nteziryayo Eric kwegurira Rutabayiro Eric ikibanza yamugurishije kirimo amazu atanu na "annexes" biherereye mu Mudugudu wa Rusenyi, Akagari ka Murama,

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[4]Iyo ivuga ko "Ihwanya ry'imyenda riba nta rubanza kubera gusa ko amategeko abiteganya atyo, yewe n'iyo abagomba kwishyura batabizi; imyenda yombi irazimangana ku mpande zombi kuva igihe ibereyeho, kugeza ku gaciro kayo kangana".

Umurenge wa Kinyinya, mu Karere ka Gasabo, mu Mujyi wa Kigali hakabaho ihinduzamutungo (mutation) kugira ngo ave kuri Nteziryayo Eric yandikwe kuri Rutabayiro Eric;

[35] Rutegetse ko Rutabayiro Eric agomba guha Nteziryayo Eric 64.563.052 Frw;

[36] Ruvuze ko imikirize y'urubanza RCA 0047/12/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 11/01/2013, ihindutse ;

[37] Rutegetse Nteziryayo Eric gutanga amagarama y'uru rubanza angana na 36.650 Frw, atayatanga mu gihe cy'iminsi umunani, akavanwa mu bye ku ngufu za Leta.