TUYISENGE v. MUKARONI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC00008/2018/SC (Rugege, P.J., Kayitesi R, Kayitesi Z, Hitiyaremye na Cyanzayire J.) 28 Kamena 2019]

Amategeko agenga amasezerano – Amasezerano y'impano – Gusesa amasezerano – Iyo uwahawe impano agahabwa n'inshingano akazemera no ariko ntiyuzuze izo nshingano, n'impamvu ihagije y'iseswa ry'amasezerano y'impano kuko aba ahindutse amasezerano magirirane

Amategeko agenga amasezerano – Gusesa amasezerano – N'ubwo amategeko ateganya ko iseswa ry'amasezerano rigomba kuregerwa inkiko, ntibiba bikiri ngombwa kuyaregera iyo abayagiranye bemeranya kuyasesa no kwirengera ingaruka yabyo.

Incamake y'ikibazo: Kabaziga yahaye umwuzukuru we Bizimana kumucungira umutungo we wose, akawubyaza ibyo azajya amutungisha kuko yaramaze gusaza, hanyuma amuha n'impano y'umurima umwe, bakorana amasezerano mu nyandiko maze abagize umuryango wabo bayashyiraho umukono.

Nyuma yaho Kabaziga abonye umwuzukuru we atabyitwayemo neza nkuko babyumvikanye, asesa amasezerano bagiranye amwambura gucunga iyo mitungo ye yose yamuhaye hamwe n'umurima yari yaramuhaye nk'impano, ayiha umwe mu bagore ba Bizimana babanaga batarasezeranye witwa Mukaroni, nawe bakorana amasezerano, amuha n`inshingano zo kubicunga no kubimutungisha neza, amuha na wa murima yambuye

umwuzukuru we, Mukaroni awibaruzaho abona ndetse n'amasezerano y'ubukode burambye kuri ubwo butaka.

Bizimana yaje gushyingiranwa byemewe n'amategeko n'umugore we wakabiri witwa Tuyisenge bari basanzwe babana nk'umugore n'umugabo, nyuma agabanya abagore be babiri imitungo ye uretse imirima ibiri yari ifitwe na Mukaroni.

Tuyisenge yatanze ikirego mu nteko y'Abunzi yo mu kagari ka Kabeza arega Mukaroni na Bizimana asaba ko bagabana imirima ibiri, Mukaroni yari atunze, Inteko y'Abunzi y'Akagari yemeje ko umurima uburanwa ari uwa Mukaroni. Tuyisenge yajuririye uwo mwanzuro mu Nteko y'abunzi bo mu murenge wa Cyuve maze iyi nteko yemeza nanone ko imirima ibiri iburanwa ari iya Mukaroni.

Tuyisenge yaregeye umwanzuro w'Inteko y'Abunzi mu Rukiko rw'Ibanze rwa Muhoza, rwemeza ko uwo mwanzuro uvanyweho, rwemeza ko imirima yose uko ari ibiri iburanwa igomba kugabanywamo kabiri, ½ cya buri murima kikajya mu mutungo Tuyisenge asangiye na Bizimana, ikindi ½ kikaba ari icya Mukaroni, rwemeza ko inyandiko yo ku wa 01/02/2000 isesa impano y'umurima Bizimana yari yarahawe na nyirakuru iteshejwe agaciro kuko itubahirije ibiteganywa n'amategeko.

Mukaroni yatanze ikirego cyo gusubirishamo urubanza ingingo nshya mu Rukiko rw'Ibanze rwa Muhoza, avuga ko hari bimwe mu bimenyetso yari yatanze mu Rukiko birimo ibyangombwa by'ubutaka bigaragaza ko uwo murima aruwe bitasuzumwe. Avuga kandi ko Bizimana na Tuyisenge batigeze batambamira icyo cyemezo cyangwa ngo nabo biyandikisheho uwo murima. Urukiko rwemeza ko ikirego cya Mukaroni cyo gusubirishamo urubanza ingingo nshya gifite ishingiro kuri bimwe, rutegeka ko urubanza rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ruhindutse

ku bijyanye n'umurima Nº1, rwemeza ko umurima Nº2 ubaruye kuri Mukaroni ari uwe, rutegeka Tuyisenge guha Mukaroni amafaranga y'igihembo cya Avoka, rutegeka Tuyisenge na Bizimana gufatanya gusubiza Mukaroni amafaranga yari yatanzeho ingwate y'igarama.

Tuyisenge yandikiye Urwego rw'Umuvunyi asaba kurenganurwa kuko asanga urubanza rwo gusubirishamo ingingo nshya rwaciwe n'Urukiko rw'Ibanze rwa Muhoza rwaramurenganyije. Nyuma yo gusuzuma icyo kibazo, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rwongera kuburanishwa.

Mu Rukiko rw'Ikirenga, Tuyisenge avuga ko asaba kurenganurwa kuko asanga amasezerano y'impano yari yarakozwe hagati ya Bizimana na Kabaziga yasheshwe mu buryo bunyuranije n'amategeko kuko iseswa ryayo ryagombaga gukorwa n'urukiko ariko akaba ataruko byagenze.

Mukaroni yiregura avuga ko ibivugwa na Tuyisenge ko amasezerano y'impano yasheshwe mu buryo bunyuranije n'amategeko nta shingiro bifite kuko uwatanze impano nta mpamvu yari kujya mu Rukiko kubisaba mu gihe uwo bayagiranye yemeye ko bayasesa.

Incamake y'icyemezo: 1. Iyo uwahawe impano agahabwa n'inshingano akazemera no ariko ntiyuzuze izo nshingano, n'impamvu ihagije y'iseswa ry'amasezerano y'impano kuko aba ahindutse amasezerano magirirane.

2. N’ubwo amategeko ateganya ko iseswa ry’amasezerano rigomba kuregerwa inkiko, ntibiba bikiri ngombwa kuyaregera iyo abayagiranye bemeranya kuyasesa no kwirengera ingaruka yabyo. Bityo iseswa ry’impano ntaho rinyuranyije n`amategeko, hakaba nta mpamvu amasezerano yateshwa agaciro.

Ikirego cyo gusubirishamo urubanza ku mpamvu z akarengane nta shingiro gifite.

Amategeko yashingiweho:
Itegeko Nº43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 10;
Itegeko Nº22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy’Urwunge rw’Amategeko mbonezamubano kandi rishyiraho igice cya gatatu cyerekeye imicungire y’umutungo w’abashyingiranywe, impano n’izungura, ingingo ya 37, 38, 40;
Code Civil Français, ingingo ya 956.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Mu gihe Bizimana Daniel yabanaga na Mukaroni Xaverine batarasezeranye mu buryo bwemewe n’amategeko, Nyirakuru Kabaziga ubwo yari atagishoboye guhinga, yamuhaye imitungo ye n’inshingano yo kuyicunga akayibyaza ibyo azajya amutungisha, by’umwihariko, amuha n’impano

y’umwe mu mirima ye uherereye kwa Ndagozera. Ibyo yabishyize mu nyandiko yo ku wa 04/4/1999 hari nabagize umuryango wabo bayishyiraho umukono. Kabaziga abuze ubufasha yari amutezeho kandi abonye atangiye gutagaguza ibye kubera imyitwarire ye mibi, byatumye asesa ayo masezerano, amwambura inshingano yari yaramuhaye zo gucunga ibye no kubitubura ndetse amwambura n`umurima yari yaramuhaye. Ibintu bye yabihaye Mukaroni amuha n`inshingano zo kubicunga no kubimutungisha neza, kandi amuha na wa murima yambuye Bizimana. Ibi nabyo yabishyize mu masezerano yo ku wa 01/2/2000, kandi abikorera nanone imbere y’Umuryango. Mukaroni yibarujeho wa murima, ahabwa icyangombwa cy’ubutaka gifte UPI 4/03/02/04/2883.

[2] Igihe Bizimana Daniel yashyingiranwaga na Tuyisenge Françoise, imbere y’Inzego z’Ubutegetsi ku wa 15/8/2006, (ariko nawe bari basanzwe babana nkuko yabanaga na Mukaroni), uwo munsi, yagabanyije imitungo ye abagore be Tuyisenge na Mukaroni, uretse imirima ibiri yari itunzwe na Mukaroni. Umurima umwe Bizimana avuga ko yawuhawe n’ababyeyi be akibana na Mukaroni. Umurima wa kabiri Bizimana na Mukaroni, buri wese avuga ko yawuhawe na Kabaziga. Tuyisenge umugore w’isezerano yatangije imanza asaba kugira uruhare kuri iyo mirima yombi.

[3] Tuyisenge yabanje kurega Mukaroni na Bizimana mu Nteko y’Abunzi b’Akagari ka Kabeza, asaba ko bagabana ya mirima ibiri (2) Mukaroni atunze, agasigarana 1/2 cya buri murima, naho Tuyisenge na Bizimana nabo bagahabwa ½ cya buri murima. Avuga ko iyo mirima igizwe n’igitari kiri ku Kalinzi hamwe n’umurima wadikanyijwe no kwa Ntaganzwa, Bizimana yari yarahawe na nyirakuru Kabaziga ngo

awumucungire ashobore kuwubyaza ibimutunga. Mukaroni we yaburanye agaragaza ko uwo murima Bizimana yari yarawuhawe koko na nyirakuru Kabaziga mu masezerano yo ku wa 04/4/1999, ariko aza kuwumwambura mu iseswa ry'ayo masezerano, Mukaroni aba ariwe uwuhabwa mu nyandiko yo ku wa 01/02/2000, ko rero ari umutungo we bwite atawugabana nabo.

[4] Inteko y'Abunzi yemeje ku wa 01/03/2006, ko umurima uburanwa ari uwa Mukaroni yahawe na nyirakuru wa Bizimana, naho umurima wa mbere (igitari) kikazagabanywa abana bose bakomoka kuri Bizimana.

[5] Tuyisenge yajuririye uwo mwanzuro mu Nteko y'Abunzi b'Umurenge wa Cyuve, ifata icyemezo ku wa 21/10/2011, yemeza ko ihaye imirima yombi uko ari ibiri yaburanwaga Mukaroni Xaverine.

[6] Tuyisenge yaregeye umwanzuro w'Inteko y'Abunzi mu Rukiko rw'Ibanze rwa Muhoza, ruca urubanza RC1017/011/TB/MUH ku wa 20/11/2013, rwemeza ko uwo mwanzuro uvanyweho, rwemeza ko imirima yose uko ari ibiri iburanwa igomba kugabanywamo kabiri, ½ cya buri murima kikajya mu mutungo Tuyisenge asangiye na Bizimana, ikindi ½ cya buri murima kikaba ari icya Mukaroni, rwemeza ko inyandiko yo ku wa 01/02/2000 bavuga ko Bizimana yamburiweho impano y`umurima yari yarahawe na nyirakuru, iteshejwe agaciro ku bijyanye n'impano ya burundu y'umurima wari warahawe Bizimana, kuko itubahirije ibiteganywa n'amategeko.

[7] Mukaroni yatanze ikirego mu Rukiko rw'Ibanze rwa Muhoza asaba gusubirishamo ingingo nshya urwo rubanza RC

1017/011/TB/MUH rwaciwe ku wa 20/11/2011, avuga ko hari bimwe mu bimenyetso yari yatanze mu Rukiko birimo ibyangombwa by'ubutaka yibarujeho uwo murima bitasuzumwe. Avuga kandi ko Bizimana na Tuyisenge batigeze batambamira icyo cyemezo cyangwa ngo nabo biyandikisheho uwo murima.

[8] Urukiko rwaciye urubanza RC 0741/13/TB/MUH ku wa 25/04/2014, rwemeza ko ikirego cya Mukaroni cyo gusubirishamo urubanza RC 1017/011/TB/MUH ingingo nshya, gifite ishingiro kuri bimwe, rutegeka ko urubanza RC 1017/011/TB/MUH rwaciwe n' Urukiko rw'Ibanze rwa Muhoza ku wa 20/11/2013 ruhindutse ku bijyanye n'umurima nº 1, rwemeza ko umurima Nº2 883/MUS/CYU ubaruye kuri Mukaroni ari uwe, rutegeka Tuyisenge guha Mukaroni 150.000Frw y'igihembo cya Avoka, rutegeka Tuyisenge na Bizimana gufatanya kwishyura amagarama y'urubanza angana na 3.500Frw, Mukaroni agasubizwa 2000Frw yari yatanzeho ingwate y'igarama.

[9] Tuyisenge yandikiye Urwego rw'Umuvunyi asaba kurenganurwa kuko asanga urubanza RC0741/13/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza kuwa 25/04/2014, rwaramurenganyije.

[10] Nyuma yo gusuzuma icyo kibazo, Urwego rw'Umuvunyi rwasanze urubanza RC 0741/13/TB/MUH rukwiriye gusubirwamo ku mpamvu z'akarengane, maze, rwandikira Perezida w'Urukiko rw'Ikirenga ku wa 21/03/2016, rumusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rwongera kuburanishwa.

[11] Urubanza rwaburanishijwe ku wa 03/06/2019, Tuyisenge na Bizimana bahagarariwe na Me Kanyarugano Cassien, Mukaroni ahagarariwe na Me Nyirabera Josephine.

Ikibazo cy'ingenzi cyasuzumwa muri uru rubanza ni ukumenya niba iseswa ry'amasezerano y'impano hagati ya Kabaziga n'umwuzukuru we Bizimana Daniel ryarakurikije amategeko.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba iseswa ry'amasezerano y'impano yo ku wa 04/04/1999 ryarakurikije amategeko.

[12] Me Kanyarugano Cassien uhagarariye Tuyisenge Françoise na Bizimana Daniel avuga ko akarengane muri uru rubanza gashingiye ku makosa yakozwe n'Urukiko rw'Ibanze rwa Muhoza, aho rwemeje mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane ko amasezerano y'impano ya Bizimana yo ku wa 04/4/1999 yasheshwe, akaba asanga ibyakozwe binyuranije n'ibiteganywa n'amategeko kuko byagombaga kubanza kuregerwa mu Rukiko (iseswa ry'amasezerano).

[13] Me Kanyarugano Cassien avuga ko Itegeko Nº22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'Urwunge rw'Amategeko mbonezamubano kandi rishyiraho igice cya gatatu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ryakoreshwaga uru rubanza ruburanishwa, *yateganyaga ko ``uwatanze impano, iyo afite impamvu zatuma iseswa, abanza gushyikiriza ikirego Urukiko rubifitiye ububasha akaba arirwo rwemeza ko iseswa``*. Avuga ko Umucamanza

yashingiye ku ngingo ya 37 y'Itegeko Nº22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru, bituma impano iseswa, akaba asanga ibyakozwe bitarubahirije ibiteganywa n'amategeko cyane ko na Bizimana atigeze agaragara mu nyandiko yo ku wa 01/02/2000 bavuga yamwambuye impano yari yarahawe na nyirakuru ku wa 04/04/1999.

[14] Me Kanyarugano Cassien mu izina ry'abarega yongeraho ko umurima uburanwa muri uru rubanza wari waragabanyijwemo kabiri, Tuyisenge na Bizimana bahabwa igipande cyawo, ikindi gihabwa Mukaroni, ariko ko nyuma y'igabana ryawo, Mukaroni ngo yakomeje kuwikubira wenyine.

[15] Ku byerekeye iseswa ry'amasezerano y`impano yo ku wa 04/04/1999, Me Nyirabera Josephine uhagarariye Mukaroni avuga ko ibivugwa n'uhagarariye Tuyisenge ko iseswa ry'amasezerano ryagombaga kuregerwa Urukiko, nta shingiro bifite kuko uwatanze impano nta mpamvu yari kujya mu Rukiko kubisaba mu gihe uwo bagiranye ayo masezerano y'impano yemeye ko bayasesa, ko kandi ikibishimangira ari uko n'inyandiko yayo y'umwimerere yo ku wa 04/04/1999, Bizimana yayihaye Kabaziga arayica, akaba ariyo mpamvu umwimerere wayo utanagaragara muri dosiye y`izi manza. Ikindi kibishimangira ni ukuba byarabaye Bizimana akicecekera ntagire icyo avuga kuri iryo seswa ry'amasezerano, bivuze ko yabyemeraga.

[16] Naho ku kibazo cy'uko umurima uburanwa wari waragabanyijwe ababuranyi, Me Nyirabera Josephine avuga ko ibivugwa n'uhagarariye abaregwa ataribyo, kuko mu gihe Bizimana yagabanyaga imitungo abagore bombi, ntabwo umurima uburanwa wigeze ugabanwa, ko ibyo binagaragazwa n'uko mu gihe cy'ibarura rusange, uwo murima Mukaroni

yawibarujeho ijana ku ijana (100%). Avuga ko iyo aza kuba awusangiye na Bizimana, yari gutambamira iryo baruza agaragaza ko bawufiteho amakimbirane, akaba asanga kuba atarabikoze ari uko yemeraga ko uwo murima ari uwa Mukaroni wose.

UKO URUKIKO RUBIBONA

[17] Tuyisenge Françoise na Bizimana Daniel bavuga ko akarengane bagiriwe muri uru rubanza rusubirishwamo gashingiye ku makosa yakozwe n'Urukiko rw'Ibanze rwa Muhoza, aho rwemeje ko amasezerano y'impano y`umurima Bizimana yagiranye na nyirakuru Kabaziga ku wa 04/4/1999 yasheshwe hagati yabo, bidakozwe n'Urukiko.

[18] Ku byerekeye ibimenyetso, dosiye y'urubanza igaragaza inyandiko yo ku wa 04/4/1999, Kabaziga yahereyeho Bizimana ibye ngo abimutungemo, amuha n'impano y'umurima, Bizimana nawe abyemera byombi. Dosiye igaragaza nanone inyandiko yo ku wa 01/2/2000, Kabaziga yakoze yambura Bizimana inshingano zo gucunga ibye no kubimutungisha, asubirana ya mpano y'umurima, maze abyegurira Mukaroni, uyu nawe yemera impano n'inshingano arazubahiriza. Mu nyandiko yo ku wa 01/2/2000, Kabaziga asobanura ko ahinduye amasezerano yari yahereyeho Bizimana imitungo n`impano yo ku wa 04/4/1999, kubera ko ntacyo yamufashije ngo amufate neza no kuba yabinyereza kubera imyifatire ye mibi (ari mu busambanyi), ko abimunyaze, abiragije Mukaroni, ko uyu nawe aramutse atabimufashemo neza, yazabiragiza undi. Muri ayo masezerano, avuga ko yeguriye Mukaroni wa murima yambuye Bizimana, n'umuryango we urabyemera. Iyi nyandiko kimwe n'iya mbere, Kabaziga yagiye azikorera imbere y'umuryango

we, zishyirwaho imikono. Dosiye ikagaragaza n'icyemezo cy'umutungo N° 4/03/02/04/2883 cyo ku wa 19/12/2011 cyerekana ko Mukaroni yahise yibaruzaho uwo murima.

[19] Imwe mu mpamvu zitangwa n'Itegeko rigenga impano n'izungura, zituma amasezerano y`impano aseswa, ni ukutubahiriza inshingano ziyaturutseho k'uwayihawe, kandi bigakorwa mu gihe cy'umwaka umwe uhereye ku munsi ikosa ryakoreweho cyangwa ku munsi uwatanze yarimenyeyeho.

[20] Ku byerekeye impamvu y'iseswa ry'Amasezerano y'impano yabaye hagati ya Kabaziga n'umwuzukuru we Bizimana ku wa 4/4/1999 yerekeye inshingano zo kumucungira ibye, kubimutungamo neza hamwe n'impano y`umurima uburanwa nkuko byagaragajwe haruguru, Urukiko rusanga Kabaziga yaragaragaje mu masezerano mashya impamvu zatumye asesa aya mbere. Izi mpamvu n'uko Bizimana atamucungiye ibye neza ngo anabimutungemo neza, ko ahubwo yashoboraga no kuwutagaguza kubera imyitwarire ye mibi. Urukiko rusanga iyo ari impamvu ihagije y`iseswa ry`impano Kabaziga yari yarahaye Bizimana kubera inshingano atubahirije, hashingiwe ku biteganywa n'ingingo ya 38, agace ka 3 y'Itegeko Nº 22/99 ryo ku wa 12/11/1999[1] ryakoreshwaga igihe ikirego cyatangwaga. Iryo seswa ryakozwe ku wa 01/02/2000, aho bigaragariye ko Bizimana atubahiriza inshingano yahawe, mu gihe kitarenze umwaka, ibi bikaba byubahirije ingingo ya 40 y'Itegeko rimaze kuvugwa. Ibi kandi ninako bimeze mu mategeko y'ahandi nko mu Bufaransa, aho

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[1] Itegeko Nº 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'Urwunge rw'Amategeko mbonezamubano kandi rishyiraho igice cya gatatu cyerekereye imicungire y'umutungo w'abashyingiranywe, impano n'izungura.

impano zimwe na zimwe zishobora gutangwa, uzihawe akagira ibyo ategekwa kubahiriza: urugero: umukecuru uhaye umuturanyi we inyubako ariko akamusaba kumuha ibimutunga no kumwitaho ubuzima bwe bwose. Muri icyo gihe, buri wese agomba kubahiriza inshingano ze. Amasezerano y`impano ahinduka magirirane, iyo rero umwe mu mpande zombi atubahirije inshingano ze, urundi ruhande rushobora gusaba gusesa amasezerano[2] *(Certaines donations peuvent être consenties en demandant au gratifié de'exécuter certaines charges: par exemple, une dame âgée donne son immeuble ā un voisin en lui demandant, en-contrepartie, de la nourrir et de l'entretenir sa vie durant. Dans ce cas, chacun doit executer une obligation [……….]. La donation devient un contrat réciproque, et si l`une des parties ne respecte pas ses obligations, l'autre aura la possibilité de demander l`annulation de la convention).*

[21] Urukiko rusanga ariko n'ubwo amategeko ateganya ko iseswa ry'amasezerano rigomba kuregerwa inkiko, ntibiba bikiri ngombwa kujya imbere y'umucamanza iyo ba nyirayo bemeranya kuyasesa no kwirengera ingaruka yabyo.

[22] Ku birebana n'uru rubanza, n'ubwo iri seswa ry'impano ritaregewe ngo rikorwe n'inkiko nkuko ingingo ya 40 y'Itegeko Nº22/99 ryo ku wa 12/11/1999 rivuzwe haruguru ibiteganya, bihuje neza n'ibivugwa n'amategeko y'ahandi nk'ingingo ya 956 CC Français, ntaho rinyuranyije n'amategeko kuko ryakozwe na ba nyiri kugirana amasezerano babyumvikanyeho nkuko bigaragazwa n'imyitwarire ya buri wese. Kabaziga washeshe amasezerano yabitangiye impamvu mu nyandiko abigaragariza Umuryango we na Bizimana ubwe, nkuko

[2] https:/www.notaire.be/donations-successions/les-donations/une-donation-est-irrevocable

byagarajwe haruguru ntiyavuga ko atabyemeye. Byongeye kandi kuba imitungo n'inshingano yari yahaye Bizimana kimwe n'impano y'umurima by`umwihariko yarabimwambuye akabyegurira umugore we Mukaroni, Bizimana akabyakira nta mpaka ateje habe no guhakana amakosa ye, ni ikimenyetso cyuko yabyemeye.

[23] Urukiko rusanga ikindi kigaragaza ko iyo mpano Bizimana yemeye kuyamburwa, ni uko Mukaroni wayihawe yayibarujeho abibona, ariko Bizimana ntagire icyo akora ngo ayitambamire, kugeza ubwo Mukaroni ahawe icyemezo cy'uwo mutungo gifite Nº2883/MUS/CYU nkuko kigaragara muri dosiye. Uko kwifata kwa Bizimana kugaragaza ko yemeye ko nta burenganzira yari agifite kuri uwo murima, ko weguriwe Mukaroni. Rusanga kandi ari nayo mpamvu no mu gihe cy'igabana ry'imirima ryabaye hagati y'abo bagore bombi Mukaroni na Tuyisenge, uwo murima utarashyizwe ku rutonde rwiyo Bizimana yabagabanyije, nkuko bigaragazwa n'inyandiko yo ku wa 15-06-2006 Bizimana agabira abo bagore be bombi isambu ikomoka kuri se Rwanuburi igizwe n'imirima 4, nabo bakabisinyira.

[24] Hashingiwe ku ngingo z'amategeko, ibimenyetso n'ibisobanuro byatanzwe hejuru, Urukiko rusanga iseswa ry'impano yo ku wa 4/4/1999 ryabaye ku wa 1/02/2000, ntaho rinyuranyije n'amategeko, hakaba nta mpamvu amasezerano yo ku wa 01/2/2000 yateshwa agaciro. Umurima uburanwa Mukaroni atunze agomba kuwugumana kuko awutunze nk'impano yahawe na Kabaziga hashingiwe ku ngingo ya 10 y'Itegeko Nº43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda iteganya 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****, […………….]".* Imikirize y'urubanza RC 0741/13/TB/MUH/TB/MUH rwaciwe n'Urukiko rw'Ibanze ku wa 25/04/2014 rwasabiwe gusubirishwamo ku mpamvu z'akarengane igomba kugumaho kuko nta karengane kayigaragaramo.

[25] Ku kibazo cyuko uyu murima uburanwa waba wari waragabanyijwe abagore ba Bizimana, Urukiko rusanga nta mpamvu yo kugisuzuma.

2. Kumenya niba indishyi zisabwa muri uru rubaza zatangwa.

a. Ku byerekeye indishyi Tuyisenge Françoise na Bizimana Daniel basaba.

[26] Me Kanyarugano Cassien uhagarariye abarega muri uru rubanza avuga ko Mukaroni ahinga ubutaka bwa Tuyisenge guhera muri 2006, akaba abumaranye imyaka cumi n'ibiri (12ans), ko icyatamurima cya buri mwaka kingana na 90.000Frw, mu imyaka icumi ahahinze, akaba amaze kuvanamo angana na 1.000.000Frw akaba ariyo agomba kumusubiza na 200.000Frw yahaye Umuhesha w'Inkiko Irakiza Elie warangije urubanza.

[27] Me Nyirabera Josephine mu izina rya Mukaroni avuga ko ibisabwa na Tuyisenge atabihabwa kuko umurima aburana atari uwe, uwo yunganira akaba atatanga indishyi ku mutungo byagaragaye ko ari uwe.

UKO URUKIKO RUBIBONA

[28] Urukiko rw'Ikirenga rurasanga indishyi zisabirwa Tuyisenge na Bizimana nta shingiro zifite kuko nta burenganzira bafite ku murima uburanwa, n'ibiwushingiyeho bakaba atabihabwa.

b. Ku byerekeye ubujurire bwuririye ku bundi bwatanzwe na Mukaroni Xaverine

[29] Mu bujurire bwuririye ku bundi, Me Nyirabera Josephine uhagarariye Mukaroni amusabira indishyi zo kuba akomeje gushorwa mu manza zingana na 2.500.000Frw, zikubiyemo igihembo cya Avoka kingana na 1.000.000Frw, 500.000Frw y'ikurikiranarubanza no gusiragizwa, n'indishyi z'akababaro zingana na 1.000.000Frw.

[30] Me Kanyarugano Cassien avuga ko indishyi zisabwa na Mukaroni atazikwiye kubera ko asanga uru rubanza rurimo akarengane.

[31] Urukiko rw'Ikirenga rusanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Mukaroni yasabye yayahabwa, kubera ko yagombye gukoresha Avoka umuburanira, agira n'ibindi atanga bijyanye no gukurikirana urubanza, ariko kubera ko ayo asaba ari menshi, rukaba rumugeneye mu bushishozi bwarwo 500.000Frw y'igihembo cya Avoka, 300.000Frw y'ikurikiranarubanza, yose hamwe akaba 800.000Frw. Naho indishyi z'akababaro, akaba atazihabwa, kuko atashoboye kukagaragaza, ndetse akaba atagenerwa indishyi zo gushorwa mu manza kuko ari uburenganzira bw'abarega mu gihe bumva ko hari akarengane bagiriwe mu mikirize y'urubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane.

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ikirego cyatanzwe na Tuyisenge Francoise gisaba gusubirishamo ku mpamvu z'akarengane urubanza RC 0741/13/TB/MUH, rwaciwe n'Urukiko rw' Ibanze rwa Muhoza ku wa 25/04/2014, Bizimana akarugobokeshwamo, nta shingiro gifite.

[33] Rwemeje ko imikirize y'urubanza RC0741/13/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ku wa 25/04/2014, rudahindutse, uretse amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[34] Rutegetse Tuyisenge FranÇoise guha Mukaroni Xaverine 800.000Frw akubiyemo igihembo cya Avoka n'ikurikiranarubanza.