NIYIGENA v. NYIRISHEMA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00010/2017/SC (Hatangimbabazi, P.J., Ngagi na Kanyange, J.) 12 Mutarama 2018]

Amategeko agenga ubutaka – Umutungo utimukanwa – Inkomoko y'umutungo utimukanwa – Amasezerano y'ubugure – Amasezerano y'ubugure ubwayo gusa ntahagije gushingirwaho hemezwa ko umuntu ari nyiri umutungo utimukanwa ahubwo hagomba n'ukugaragazwa ko uwo awukomoraho nawe yari nyirawo ntibihagije kuvuga ko umuntu ari nyir'umutungo utimukanwa hashingiwe ku masezerano y'ubugure, hagomba no kugaragazwa ibimenyetso by'uko uwo awukomoraho nawe yari nyirawo.

Incamake y'ikibazo: Niyigena yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge arega Nyirishema Hodari kuba yarabohoje inzu ya se Ahishakiye Musafiri, uyu nawe akavuga ko yayiguze na Maso Tharcisse. Urwo rukiko, rwaciye urubanza, rwemeza ko inzu ari iya Niyigena kuko ayikomora kuri Se Ahishakiye Musafiri, bityo Nyirishema akaba agomba kuyivamo, rumutegeka nukumuha indishyi zitandukanye,

Nyirishema ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko Rukuru, urwo Rukiko rusanga nta bimenyetso Niyigena yagaragaje by'uko inzu iburanwa ari iya Se cyangwa ko Nyirishema yayibohoje, rwemeza ko urubanza rwajuririwe ruhindutse kuri byose, runategeka ko Niyigena amuha indishyi z'igihembo cy'Avoka

Niyigena Marlène ntiyishimiye imikirize y'urubanza, yandikira Urwego rw'Umuvunyi asaba ko rwasubirwamo ku mpamvu z'akarengane, nyuma yo gusuzuma urwo rubanza, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane. Ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga, yemeje ko urwo rubanza rwongera kuburanishwa.

Mwiburanisha mu Rukiko rw'Ikirenga, Niyigena aburana avuga ko inzu ari iya Ahishakiye Musafiri ibohozwa na Maso Tharcisse akayisigira Nyirishema Hodari n'inyandiko zatanzwe n'ubuyobozi zigaragaza ko Nyirishema Hodari yasigiwe iyo nzu na Maso Tharcisse wari warayibohoje, asaba ko yahabwa indishyi zitandukanye.

Nyirishema avuga ko nta karengane Niyigena Marlène yakorewe kubera ko nta nkomoko yumvikana y'inzu iburanwa yagaragaje, asaba ko yagenerwa indishyi zo gushorwa mu manza ku maherere.

Mu rwego rwo kumenya ukuri ku nzu iburanwa, Urukiko rw'Ikirenga rwabajije abatangabuhamya banyuranye, harimo abasinye ku masezerano y'ubugure hagati ya Nyirishema Hodari na Maso Tharcisse, n'abandi bafite icyo bazi ku nzu iburanwa: Uwimana Philippe, yavuze ko ari we wubatse inzu iburanwa mu mwaka wa 1981, mu kibanza yahawe na Nkundabagenzi Abdallah wamufataga nk'umwana we, ko yabaye muri iyo nzu kugeza mu mwaka wa 1988 ubwo yayigurishaga Ahishakiye Musafiri. Murari François nawe yavuze ko inzu iburanwa yubatswe na Uwimana Philippe mu kibanza yahawe na Nkundabagenzi Abdallah, nyuma ayigurisha Ahishakiye Musafiri, ko Maso Tharcisse yayibohoje, nyuma asubira ku ivuko kubera uburwayi ayisigira Nyirishema Hodari

wari inshuti ye akaba n'uw'iwabo. Mukanyindo Clotilde avuga ko yashakanye na Ngaboyayezu Tharcisse (bitaga Maso) mu mwaka wa 1995, babana mu nzu iburanwa ariko akamubwira ko atari iye, ko igihe cyose nyirayo ashobora kuza akayimwaka. Yasobanuye ko hageze igihe umugabo we ashaka gusubira iwabo, iyo nzu ayisigira Nyirishema Hodari wari inshuti ye kandi bakomoka mu Karere kamwe, ko kandi atahamya ko yasinyiye kuyigurisha kuko itari iyabo.

Naho witwa Dusengimana Perijine, avuga ko Nyirishema Hodari yamubwiye ko yabonye inzu yo kugura amusaba kumuherekeza, amubera umugabo, ko kandi bari bazi ko ari iya Maso Tharcisse kuko ari we wayibagamo. Uwamariya Immaculée, yasobanuye ko nyuma ya Jenoside yakorewe Abatutsi, Ngaboyayezu Tharcisse (Maso) yabaye iwe, ko umusaza witwa Rubagumya Georges yamurangiye inzu iburanwa, amubwira ko idafite inkurikizi za vuba, Ngaboyayezu Tharcisse arayitunganya anayishakiramo umugore, ariko nyuma aza kurwara yiyemeza gusubira iwabo ayisigira Nyirishema Hodari.

Kuri ubwo buhamya bwatanzwe, Niyigena Marlène avuga ko ubwa Uwimana Philippe, Murari François, Uwimana Immaculée na Mukanyindo Clotilde bushimangira ko inzu iburanwa yari yarabohojwe na Maso Tharcisse akaza kuyisigira Nyirishema Hodari. Asaba Urukiko ko rwakwemeza ko inzu ari iye bitewe n'uko ari we ugaragaza inkomoko yayo.

Naho Nyirishema avuga ko Mukanyindo wari umugore wa Maso Tharcisse, wanasinye ku masezerano y'ubugure, uyu munsi uvuga ko bari barabohoje icyo agamije nu gutesha agaciro ayo masezerano, kugira ngo ayisubirane abinyujije ku bandi avuga ko aribo ba nyirayo. Asoza avuga ko ibyo kuvuga ko Maso Tharcisse yavuze ko inzu itari iye, ari ibyo bamuvugira

kuko atakiriho, akaba atari kujya asana inzu azi neza ko atari iye, ko rero Urukiko rutashingira ku magambo gusa mu gihe hari inyandiko y'amasezerano y'ubugure.

Incamake y'icyemezo: Amasezerano y'ubugure ubwayo gusa ntahagije gushingirwaho hemezwa ko umuntu ari nyiri umutungo utimukanwa ahubwo hagomba n'ukugaragazwa ko uwo awukomoraho nawe yari nyirawo. Bityo, kuba Nyirishema Hodari inkomoko y'inzu ayishingira ku bugure bwayo na Ngaboyayezu ariko ntagaragaze niba uwamugurishije yari iye, ubwo bugure nta gaciro bugomba guhabwa kuko uwagurishijeyaba yaragurishije ibitari ibye, inzu ikaba igomba kwegurirwa Niyigena kuko niwe ugaragaza ko ayikomora kuri se.

Ikirego gisubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.

Amategeko yashingiweho:

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3, igika cya mbere, n'iya 65.

Itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano: ibyerekeye imirimo nshinganwa cyangwa amasezerano (Ryakuweho n'itegeko n'Itegeko n° 020/2019 ryo kuwa 22/08/2019 rikuraho amategeko yose yashyizweho mbere y'itariki y'ubwigenge)

Nta manza zifashishijwe.

Inyandiko z'abahanga :

François Terré et Philippe Simler, Droit civil, Les Biens, Dalloz, 7ème éditional, p. 418.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Niyigena Marlène yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge arega Nyirishema Hodari ko yabohoje inzu ya Se Ahishakiye Musafiri, iri mu Mudugudu wa Ramiro, Akagari ka Karambo, Umurenge wa Gatenga mu Mujyi wa Kigali, Nyirishema Hodari we akavuga ko yayiguze ku wa 15/06/1997 na Maso Tharcisse.

[2] Urwo Rukiko rwaciye urubanza nº RC 0025/12/TGI/NYGE ku wa 29/06/2012, rwemeza ko inzu ari iya Niyigena Marlène kuko ayikomora kuri Se Ahishakiye Musafiri, Nyirishema Hodari akaba agomba kuyivamo, runamutegeka kumuha 1.000.000 Frw y'indishyi mbonezamusaruro, ikurikiranarubanza n'igihembo cy'Avoka.

[3] Nyirishema Hodari yajuririye mu Rukiko Rukuru, ruca urubanza nº RCA 0433/12/HC ku wa 24/01/2014, rusanga nta bimenyetso Niyigena Marlène yagaragaje by'uko inzu iburanwa ari iya Se Ahishakiye Musafiri, bikaba bitanavugwa ko Nyirishema Hodari yayibohoje, rwemeza ko urubanza rwajuririwe ruhindutse kuri byose, inzu igasubira mu maboko ya Nyirishema Hodari. Rwategetse kandi NiyigenaMarlène kumuha 2.000.000 Frw akubiyemo indishyi n'igihembo cy'Avoka.

[4] Niyigena Marlène yatanze ikirego ku Rwego rw'Umuvunyi asaba ko urubanza nº RCA 0433/12/HC/KIG rwasubirwamo ku mpamvu z'akarengane, Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 14/11/2017, Niyigena Marlène ahagarariwe na Me Gahutu Joseph, naho Nyirishema Hodari ahagarariwe na Me Bimenyimana Emmanuel, rwongera kuburanishwa ku wa 13/12/2017 humvwa abatangabuhamya nk'uko byari byemejwe n'Urukiko mu iburanisha rya mbere, uwo munsi ababuranyi baburana bahagarariwe nka mbere.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Kumenya niba inzu iburanwa ari iya Niyigena Marlène akomora kuri Se Ahishakiye Musafiri.

[6] Me Gahutu Joseph avuga ko mu kwemeza ko inzu iburanwa ari iya Niyigena Marlène, Urukiko Rwisumbuye rwa Nyarugenge rwabishingiye ku buhamya bwa Murari François wavuze ko yari iya Ahishakiye Musafiri kuva mbere ya 1994, ko yabohojwe na Maso Tharcisse waje kurwara akajya iwabo, akayisigira Nyirishema Hodari. Rwanashingiye ku nyandiko zatanzwe n'ubuyobozi zigaragaza ko Nyirishema Hodari yasigiwe iyo nzu na Maso Tharcisse wari warayibohoje.

[7] Avuga kandi ko ubwo buhamya bushimangirwa n'ubwa Uwimana Philippe uvuga ko ari we wiyubakiye inzu iburanwa, akayigurisha Ahishakiye Musafiri, ko no mu Rukiko Rukuru,

Mukanyindo Clotilde wari warashakanye na Maso Tharcisse, yasobanuye ko babaye muri iyo nzu bazi ko ari imbohozanyo. Akomeza avuga ko mu nyandiko zatanzwe n'Ubuyobozi bw'inzego z'ibanze, cyane cyane iyo ku wa 01/12/2009, Nyirishema Hodari yivugiye ko ku wa 30/12/2009 aribwo azatanga inzu iburanwa n'ibyangombwa byayo, bivuze ko nawe yemeraga ko atari iye.

[8] Na none kandi, ngo kuba uwo baburana avuga ko umutungo Niyigena Marlène yasabye kuzungura ari uwo mu Rugunga, ntibyabuza ko aburana inzu yo mu Gatenga kuko yemerewe kuzungura imitungo y'umubyeyi we aho yaba iri hose. Asanga rero Urukiko rugomba kwemeza ko inzu ari iye bitewe n'uko ari we ugaragaza inkomoko yayo kuko ari iya Se Ahishakiye Musafiri, nawe uyikomora kuri Uwimana Philippe, wayubatse mu kibanza yahawe na Nkundabagenzi Abdallah, ko rero amasezerano Nyirishema Hodari ashingiraho avuga ko yayiguze, nta gaciro agomba guhabwa kuko yayakoranye n'utari nyiri umutungo, akaba yateshwa agaciro hashingiwe ku biteganywa n'ingingo ya 276 CCLIII.

[9] Uburanira Nyirishema Hodari avuga ko nta karengane Niyigena Marlène yakorewe kubera ko nta nkomoko yumvikana y'inzu iburanwa yagaragaje, ko ahubwo ibimenyetso batanze bigaragaza ko Ahishakiye Musafiri atigeze atunga inzu mu Kagari ka Karambo.

[10] Akomeza avuga ko n'ubwo batagamije kuvuga ko habayeho ubuzime bwo gukurikirana iyo nzu (prescription acquisitive), ariko bibaza impamvu nyina wa Niyigena Marlène, utarigeze uva mu gihugu, yatanze ikirego kirebana n'imitungo yo mu Rugunga, naho inzu iburanwa ikaregerwa nyuma y'imyaka 16, ko nubwo haba hari impamvu zatumye

adakurikirana iyo nzu, ntacyari kubuza mushiki wa Ahishakiye Musafiri witwa Ahishakiye M.Rose, kuyikurikirana, cyane cyane ko yatanze ubuhamya mu rubanza nº RC 0224/08/TB/NYMBO avuga ko Niyigena Marlène yabyawe na musaza we, ko ahubwo ibyo bishimangira ko imitungo ya Ahishakiye Musafiri ari iyo mu Biryogo aho yabanaga na nyina wa Niyigena Marlène, kuko no mu rubanza yaburanye asabira umwana we kuzungura imitungo ya Se, yavuze ko iyo mitungo iri mu Rugunga, akaba ataravuze ko hari imitungo iri mu Gatenga.

[11] Akomeza avuga ko Mukanyindo Clotilde wari umugore wa Maso Tharcisse, wanasinye ku masezerano y'ubugure yo ku wa 15/06/1997, uyu munsi avuga ko bari barabohoje iyo nzu mu rwego rwo gushaka gutesha agaciro ayo masezerano, agamije kuyisubirana abinyujije ku bandi avuga ko aribo ba nyirayo.

[12] Avuga kandi ko nubwo uwo baburana avuga ko inzu iburanwa yubatswe na Uwimana Philippe akayigurisha Ahishakiye Musafiri, nta muntu wo mu Karambo wemeza ko ahamuzi, ndetse na Murari François washingiweho n'Urukiko Rwisumbuye rwa Nyarugenge nk'umuntu wahatuye mbere ya 1994, ubuhamya bwe buvuguruzwa n'ikimenyetso batanze (kuri cote ya 15) kigaragaza ko yaje kuhatura nyuma ya 1994 avuye mu Bugesera. Byongeye kandi, mu buhamya yatanze muri urwo Rukiko, yavuze ko Ahishakiye Musafiri ari we wubatse inzu iburanwa, mu gihe Uwimana Philippe avuga ko ari we wayigurishije Ahishakiye Musafiri, hakaba hakwibazwa uwayubatse hagati y'abo bombi.

[13] Ku birebana n'uko Nyirishema Hodari yemeye ko azatanga inzu n'ibyangombwa byayo ku wa 30/12/2009, umuburanira avuga ko uwo baburana avugisha inyandiko yo ku

wa 01/12/2009 ibyo itavuga, ko ahubwo icyo yemeye ari uko azatanga ibyangombwa cyangwa inzu, ariko ibimenyetso, akaba yarerekanye ibyo byangombwa bigizwe n’amasezerano y’ubugure hamwe n’icyangombwa cy’umutungo bimuhesha uburenganzira ku nzu yaguze na Maso Tharcisse wari uyituyemo, akaba kandi afatwa nka nyirayo kuko ari we uwaguze yayisanzemo, ko kandi ibivugwa n’uwo baburana by’uko Maso Tharcisse yasigiye iyo nzu Nyirishema Hodari mu rwego rw‟ubukode, bitahabwa agaciro kuko nta masezerano y‟ubwo bukode yagaragajwe.

[14] Nk’uko byavuzwe haruguru, mu rwego rwo kumenya ukuri ku nzu iburanwa, habajijwe abatangabuhamya banyuranye, harimo abasinye ku masezerano y’ubugure hagati ya Nyirishema Hodari na Maso Tharcisse, n’abandi bafite icyo bazi ku nzu iburanwa.

[15] Mu buhamya bwatanzwe na Uwimana Philippe, yavuze ko ari we wubatse inzu iburanwa mu mwaka wa 1981, mu kibanza yahawe na Nkundabagenzi Abdallah wamufataga nk’umwana we, ko yabaye muri iyo nzu kugeza mu mwaka wa 1988 ubwo yayigurishaga Ahishakiye Musafiri.

[16] Murari François nawe yavuze ko inzu iburanwa yubatswe na Uwimana Philippe mu kibanza yahawe na Nkundabagenzi Abdallah, nyuma ayigurisha Ahishakiye Musafiri, ko Maso Tharcisse yayibohoje, nyuma asubira ku ivuko kubera uburwayi ayisigira Nyirishema Hodari wari inshuti ye akaba n‟uw‟iwabo. Yasobanuye kandi ko yageze mu Karambo mu mwaka wa 1981 akodesha inzu ya Nkundabagenzi Abdallah, ko abavuga ko atahabaye bari bataraza kuhatura.

[17] Mukanyindo Clotilde nawe yabwiye Urukiko ko yashakanye na Ngaboyayezu Tharcisse (bitaga Maso) mu mwaka wa 1995, babana mu nzu iburanwa ariko akamubwira ko atari iye, ko igihe cyose nyirayo ashobora kuza akayimwaka. Yasobanuye ko hageze igihe umugabo we ashaka gusubira iwabo, abanza gushaka gusigira iyo nzu abavandimwe be b’abasirikari kugira ngo nyirayo naza bazayimusubize, ariko bamubwira ko batabishobora kubera akazi bakoraga, ari nabwo yayisigiye Nyirishema Hodari wari inshuti ye kandi bakomoka mu Karere kamwe, amusaba 150.000 Frw yo kumufasha gusubira iwabo, undi amuha 60.000 Frw. Yakomeje asobanura ko nyuma y’igihe gito, umugabo we yitabye Imana, aza gusaba Nyirishema Hodari kumuha ku mafaranga yasigaye, amuhamo 10.000 Frw, agarutse aramwirukana amubwira ko ntacyo agomba kumwishyuza ngo kuko nabo inzu bari barayibohoje, ko kandi atahamya ko yasinyiye kuyigurisha kuko itari iyabo, cyane cyane ko ku masezerano handitseho Korotirida gusa, akibaza impamvu hatanditseho Mukanyindo, ko n’umukono uriho abona atari uwe.

[18] Umutangabuhamya witwa Dusengimana Perijine, nawe yabwiye Urukiko ko yakoranaga na Nyirishema Hodari akazi ko gutwara abantu (taximan), amubwira ko yabonye inzu yo kugura amusaba kumuherekeza, amubera umugabo, ko kandi bari bazi ko ari iya Maso Tharcisse kuko ari we wayibagamo.

[19] Hanabajijwe Uwamariya Immaculée, asobanura ko mu Karambo ahaba kuva mu mwaka wa 1991, ko nyuma ya Jenoside yakorewe Abatutsi, Ngaboyayezu Tharcisse (Maso) yabaye iwe kuko ava inda imwe n’umugabo we. Yakomeje asobanura ko umusaza witwa Rubagumya Georges yamurangiye inzu iburanwa, yakorerwagamo icyo gihe n’abantu

babazaga, amubwira ko idafite inkurikizi za vuba, Ngaboyayezu Tharcisse arayitunganya anayishakiramo umugore, ariko nyuma aza kurwara yiyemeza gusubira iwabo. Avuga ko yamubwiye ko yasabye abavandimwe be kuyibasigira bakamwangira, ko ariko azayisigira Nyirishema Hodari, amubajije icyo bumvikanye kubyo yakoze kuri iyo nzu, amubwira ko azamuha 120.000 Frw cyangwa 150.000 Frw (ko atabyibuka neza), ariko aza kumubwira ko yamuhaye 60.000 Frw yonyine.

[20] Yakomeje asobanura ko Ngaboyayezu Tharcisse yaje kwitaba Imana, umugore we aza kwaka Nyirishema Hodari ku mafaranga yasigaye, amubwira ko yamuhaye 10.000 Frw, nyuma agarutse kumwaka andi aramwirukana amubwira ko inzu itari iyabo.

[21] Undi wagize icyo avuga ariko ntafatwe nk'umutangabuhamya kuko ari umugore wa Nyirishema Hodari, ni Umutesi Chantal, wavuze ko umugabo we yaguze inzu na Maso Tharcisse hari ubuyobozi, ko kandi iyo nzu yari iye kuko ari we wayibagamo akanayisana.

[22] Mujyambere Schadrack nawe yavuze ko Nyirishema Hodari yaguze inzu na Maso Tharcisse abibera umugabo, ko kandi bari bazi ko iyo nzu ari iye kuko bayimubonagamo.

[23] Kuri ubwo buhamya bwatanzwe, uburanira Niyigena Marlène avuga ko ubwa Uwimana Philippe, Murari François, Uwimana Immaculée na Mukanyindo Clotilde bushimangira ko inzu iburanwa yari yarabohojwe na Maso Tharcisse akaza kuyisigira Nyirishema Hodari wari inshuti ye, bivuze ko yari azi neza ko yari yarayibohoje, bikanashimangirwa n'ubuhamwa

bwatanzwe[1] n'‟uwitwa Mutambuka Evariste, wavuze ko Nyirishema Hodari yashatse kubaka urugo, uwari Responsable (witwa Gitenge) amubuza kubaka ku butaka butari ubwe.

[24] Uburanira Nyirishema Hodari avuga ko ubuhamya bwa Mukanyindo Clotilde bugaragaza ko afitiye urwango uwo aburanira, ariyo mpamvu ashaka gutesha agaciro amasezerano y'ubugure, ko kandi ibyo kuvuga ko Maso Tharcisse yavuze ko inzu itari iye, ari ibyo bamuvugira kuko atakiriho, akaba atari kujya asana inzu azi neza ko atari iye, ko rero Urukiko rutashingira ku magambo gusa mu gihe hari inyandiko y'amasezerano y'ubugure.

UKO URUKIKO RUBIBONA

[25] Ingingo ya 3, igika cya mbere, y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'‟itangwa ryabyo, iteganya ko ‟buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana''. Ingingo ya 65 y'iryo Tegeko, iteganya ibikurikira: "Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira".

[26] Nk'uko imiburanire y'impande ziburana ibigaragaza, ikimenyetso nyamukuru Nyirishema Hodari ashingiraho avuga ko inzu iburanwa ari iye, ni amasezerano y'ubugure yakoranye

[1] Mu nama y'abaturage yakoreshejwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Gatenga ku wa 07/09/2015.

na Maso Tharcisse ku wa 15/06/1997, mu gihe NiyigenaMarlène avuga ko iyo nzu ari iya Se Ahishakiye Musafiri, Maso Tharcisse akaba yari yarayibohoje, nyuma yo gusubira iwabo akayisigira Nyirishema Hodari.

[27] Urukiko rurasanga ariko nubwo Nyirishema Hodari agaragaza ko yaguze inzu iburanwa na Maso Tharcisse (ari we Ngaboyayezu), ubwabyo bidahagije kwemeza ko ari nyiri umutungo, kuko hagombye kugaragazwa ibimenyetso by'inkomoko yawo nk'uko binemezwa n'abahanga mu mategeko François Terré et Philippe Simler, bavuga ko inyandiko zirimo n'ubugure, ubwazo zidahagije kugaragaza ko umuntu ari nyiri umutungo utimukanwa, ko agomba kugaragaza ko uwo awukomoraho nawe yari nyirawo[2].

[28] Ku birebana n'inkomoko y'inzu iburanwa, abatangabuhamya Murari François, Mukanyindo Clotilde na Uwamariya Immaculée, bahuriza ku mvugo y'uko inzu iburanwa itari iya Ngaboyayezu Tharcisse (Maso), ko yari yarayibohoje nyuma ya Jenoside yakorewe Abatutsi mu mwaka wa 1994, kandi nta mpamvu yatuma ubwo buhamya budahabwa agaciro kuko ababutanze bagaragaza ko bazi iby'iyo nzu, cyane

[2] Lorsque le demandeur est en mesure de faire état de titre de propriété, c'est-à-dire d'actes juridiques d'acquisition (achat, échange, donation, testament…), ceux-ci ne sont pas invoqués en tant que conventions translatives du droit. Ils ne permettent pas, en effet, d'établir avec une absolue certitude la régularité du transfert. En prouvant par un titre que l'on a acquis tel immeuble, on ne prouve pas irréfutablement que l'on en est devenu propriétaire. On n'a pu le devenir que si le cédant ou disposant avait lui-même cette qualité. Et il ne suffit pas de fournir le titre en vertu duquel ce dernier est devenu propriétaire, car il faudra démontrer que son propre auteur l'était déjà, et ainsi de suite : François Terré et Philippe Simler, Droit civil, Les Biens, Dalloz, 7e edition, P.418

cyane ko Murari François avuga ko yari Umuyobozi mu gace iyo nzu yubatsemo (yari responsable), akaba rero atayoberwa iby'ayo, Uwamariya Immaculée nawe akaba atabiyoberwa kuko ahaturiye kandi akaba azi Ngaboyayezu Tharcisse (Maso) nk'uko yabisobanuye, naho Mukanyindo Clotilde akaba yarayibanyemo n'umugabo we Ngaboyayezu Tharcisse (Maso).

[29] Usibye ibyemejwe n'abatangabuhamya bamaze kuvugwa by'uko inzu yari yarabohojwe na Ngaboyayezu Tharcisse (Maso), hari n'ubuhamya bwa Uwimana Philippe uvuga ko ari we wayubatse mu kibanza yahawe na Nkundabagenzi Abdallah, ibyo kandi bikaba byaranemejwe na Murari François. Iby'uko ari we wubatse iyo nzu, Uwimana Philippe yanabivugiye mu nama y'abaturage yakoreshejwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Gatenga ku wa 07/09/2015, bikaba bigaragara ko nta muturage wabivuguruje, ahubwo byashimangiwe n'abandi bari muri iyo nama barimo Simbayobewe Elisé, wavuze ko atuye aho inzu iburanwa iherereye kuva mu mwaka wa 1975, ko azi ko Uwimana Philippe ari we wayubatse mu kibanza yahawe na Abdallah, ko kandi iyo nzu yayigurishije Ahishakiye Musafiri.

[30] Muri iyo nama kandi, uwitwa Minani Emmanuel yavuze ko mu mwaka wa 1995, yakoreye mu nzu iburanwa akazi ko kubaza, nyuma uwari "Responsible" witwa Ngarambe ayiha Ngaboyayezu Tharcisse, ibyo kandi akaba yarabihurijeho na Nyirababirigi Annonciata nawe wari muri iyo nama.

[31] Urukiko rurasanga, kuba kuri Nyirishema Hodari, inkomoko y'inzu iburanwa ayishingira ku bugure bwayo na Ngaboyayezu Tharcisse (Maso), ariko ntagaragaze niba uwamugurishije yari iye, mu gihe ku rundi ruhande ubuhamya bwatanzwe n'abantu batandukanye bavuzwe haruguru,

bwumvikanisha ko iyo nzu itari iya Ngaboyayezu Tharcisse (Maso), ko ahubwo yari yarayitijwe, kandi ubwo buhamya bukaba bugomba guhabwa agaciro kuko ababutanze bafite ibyo bahurizaho byinshi, ndetse na Nyirishema Hodari akaba atagaragaza impamvu yatuma budashingirwaho usibye kuri Mukanyindo Clotilde avuga ko amufitiye urwango ariko ntavuge impamvu yarwo mu gihe ibyo yavuze abihurizaho n'abandi.

[32] Ku birebana n'ubuhamya bwa Mujyambere Schadrack n'ubwa Dusengimana Perijine, Urukiko rurasanga bigaragara ko batazi inkomoko y'inzu iburanwa, kuko kuvuga gusa ko bari bazi ko ari iya Maso Tharcisse kuko bayimubonagamo cyangwa kuko yayibagamo, bitamugira nyirayo nk'uko byasobanuwe haruguru.

[33] Urukiko rurasanga rero, ubugure Nyirishema Hodari ashingiraho avuga ko inzu iburanwa ari iye, nta gaciro bugomba guhabwa kuko Ngaboyayezu Tharcisse (Maso) yaba yaragurishije ibitari ibye kandi Nyirishema Hodari abizi neza nk'uko na none byemezwa n'abatangabuhamya Uwamariya Immaculée na Mukanyindo Clotilde bavuze ko yayimusigiye nk'umuntu wari inshuti ye, hakaniyongeraho ko Uwimana Philippe yivugiye ko ari we wubatse iyo nzu, akayigurisha Ahishakiye Musafiri, kandi hakaba hari abatangabuhamya babyemeje.

[34] Hashingiwe ku byasobanuwe haruguru no ku ngingo ya 276 y'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano (CCLIII) ivuga ko "Kugurisha ikintu cy'undi ari impfabusa; rishobora gutangirwa indishyi iyo umuguzi atigeze amenya ko icyo kintu ari icy'undi", Urukiko rurasanga ubugure bwabaye hagati ya Nyirishema Hodari na Ngaboyayezu

Tharcisse (Maso) nta gaciro bufite, hakaba hagomba kwemezwa ko inzu iburanwa ari iya NIYIGENA Marlène kuko ari we ugaragaza ko ayikomora ku mubyeyi we Ahishakiye Musafiri.

Kumenya niba indishyi zasabwe na buri ruhande zatangwa

[35] Mu myanzuro y'uburanira NiyigenaMarlène, avuga ko Nyirishema Hodari yanze kumuha inzu iburanwa kandi azi neza ko ayikomora kuri Se, akaba yaramushoye mu manza bitari ngombwa, ahubwo yagombye kuba abyaza umusaruro iyo nzu, ko kubera izo mpamvu yategekwa kumuha 5.000.000 Frw akubiyemo indishyi z'akababaro, ikurikiranarubanza no gukomeza gushorwa mu manza, hamwe na 1.000.000 Frw y'igihembo cy'Avoka.

[36] Uburanira Nyirishema Hodari avuga ko indishyi NiyigenaMarlène asaba nta shingiro zaryo, ko ahubwo yategekwa guha uregwa 5.000.000 Frw yo gushorwa mu manza ku maherere.

UKO URUKIKO RUBIBONA

[37] Urukiko rurasanga, mu ndishyi zingana na 5.000.000 Frw NiyigenaMarlène asaba zikubiyemo iz‟akababaro, ikurikiranarubanza no gushorwa mu manza, yagenerwa gusa 300.000 Frw y'ikurikiranarubanza agenwe mu bushishozi bw'Urukiko, kuko byumvikana ko kuva imanza zatangira hari amafaranga yagiye atanga mu kuzikurikirana, naho indishyi z'akababaro no gushorwa mu manza akaba atazigenerwa kuko atagaragaza ishingiro ryazo, akaba kandi yagenerwa amafaranga y'igihembo cy'Avoka kuko bigaragara ko mu nkiko yaburaniyemo kugeza mu Rukiko rw'Ikirenga, yari afite Avoka

umuburanira, bityo ku nzego zose yaburaniyemo akaba yagenerwa 1.000.000 Frw, yose hamwe akaba 1.300.000 Frw.

[38] Ku birebana n'indishyi zisabwa na Nyirishema Hodari, Urukiko rurasanga atazigenerwa kuko atsinzwe n'urubanza nk'uko byasobanuwe haruguru.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ikirego cya NiyigenaMarlène cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;

[40] Rwemeje ko urubanza nº RCA 0433/12/HC rwaciwe n'Urukiko Rukuru ku wa 24/01/2014 ruhindutse;

[41] Rwemeje ko inzu iburanwa iri mu Mudugudu wa Ramiro, Akagari ka Karambo, Umurenge wa Gatenga mu Mujyi wa Kigali, ari iya NiyigenaMarlène;

[42] Rutegetse Nyirishema Hodari kuva muri iyo nzu;

[43] Rutegetse Nyirishema Hodari guha NiyigenaMarlène 1.300.000 Frw y'igihembo cy'Avoka n'ikurikiranarubanza;

[44] Rumutegetse kandi gutanga amagarama y'urubanza.