UBUSHINJACYAHA v NSENGUMUREMYI N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RP 00005/2018/SC (Kayitesi Z, P.J, Kayitesi R, na Rukundakuvuga, J.) 20 Nzeri 2019]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Kugobokesha mu rubanza rw'akarengane – Urukiko ruburanisha ikirego cy'akarengane rushobora kugobokesha umuntu wese rusanga ari ngombwa mu nyungu zogutanga ubutabera bwuzuye.

Incamake y'ikibazo Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kacyiru Ubushinjacyaha bwareze Nsengumuremyi icyaha cyo guta urugo, ubushoreke, gukoresha umutungo w'urugo atabyumvikanyeho n'umugore we, naho Uwera aregwa ubufatanyacyaha kuri ibyo byaha. Urukiko rwafashe icyemezo rwemeza ko Nsengumuremyi ahamwa n'icyaha cyo guta urugo, naho icyaha cy'ubushoreke n'icyaha cyo gukoresha umutungo w'urugo bidaturutse ku bwumvikane bw'abashyingiranywe ntibyamuhama, ahanishwa igifungo cy'amezi atanu gisubitswe mu gihe cy'umwaka umwe, rwemeza ko Uwera adahamwa n'ibyaha akurikiranyweho, agirwa umwere.

Ubushinjacya bwajuririrye Urukiko rw'Isumbuye rwa Gasabo buvuga ko Urukiko rwirengagije ibimenyetso byatanzwe rukagira umwere Nsengumuremyi kuri bimwe ndetse rukanagira umwere Uwera bafatanije ibyaha. Nsengumuremyi nawe yajuriye avuga ko yakatiwe igihano ku cyaha cyo guta urugo yahamijwe hashingiwe ko yacyemeye mu Bugenzacyaha, kandi atarigeze acyemera. Urukiko rwaciye urubanza rwemeza ko ubujurire bw'Ubushinjacyaha ntashingiro bufite ko Ubujurire bwa Nsengumuremyi bufite ishingiro ko ibyaha Nsengumuremyi na Uwera baregwa bitabahama.

Niyonsenga waregeraga indishyi mu rubanza yasubirishijemo urubanza ku mpamvu z'akarengane. Urubanza rwaburanishijwe mu Rukiko rw'Ikirenga, rugobokesha kugahato mu rubanza mushiki wa Nsengumuremyi witwa Mutambarungu. Murubanza hatanzwemo inzitizi zitandukanye harimo iyo uwagobokeshejwe yatanze agaragaza ko atagombaga kugobokeshwa mu rubanza rugeze mu Rukiko rw'Ikirenga atarigeze agabokeshwa kuva urubanza rwatangira agasanga binyuranije n'amategeko. Niyonsenga yavuze ko kugobokeshwa kwe bifitite ishingiro kubera imwe mu mitungo yarigishijwe n'umugabo we harimo iyo Mutambarungu afite yafashije musaza we guhisha.

Uhagarariye ubushinjacyaha nawe yemeza ko kugobokeshwa kwe bifite ishingiro kuko ikiburanwa kiri mubibazo mbonezamubano atagobokeshejwe mukibazo nshinjabyaha.

Uretse gusuzuma inzitizi zitandukanye zatanzwe, urubanza mu mizi Niyonsenga yagaragaje uburyo uwo bashakanye Nsengumuremyi yarigishije umutungo bari bafitanye akawandikisha ku nshoreke ye Uwera no kuri mushiki we Mutambarungu, asaba Urukiko ko uwo mutungo wagaruzwa hamwe nindi mitungo itandukanye yatanze batabyumvikanyeho maze bakayigabana, Nsengumuremyi yakonmeje guhakana ko iyo mitungo itavuye mu mutungo bari bafitanye.

Ubushincyaha bwagaragaje ibimenyetso kuri uwo mutungo ko wakomotse kumutungo baribarashakanye.

Incamake y'icyemezo: 1. Urukiko ruburanisha ikirego cy'akarengane rushobora kugobokesha umuntu wese rusanga ari ngombwa mu nyungu zogutanga ubutabera bwuzuye, bityo kuba Mutambarungu yaragobokeshejwe bifite ishingiro kuko ariwe utunze inzu ibarirwa mu mutungo Nsengiyumva na Niyonsenga bashakanye.

2. Imitungo yose Nsengumuremyi na Niyonsenga bashakanye igomba kugaruzwa bose bakayigiraho uruhare bakayigabana kuburyo bungana, bityo inzu yari yanditsweho Uwera niyari yanditswe Mutambarungu nazo zigomba kugaruka mu mutungo wabo zikabandikaho bakazigabana.

Urubanza rwasubirishijwemo ku mpamvu z'akarengane rufite ishingiro.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye, ingingo ya 154 imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'izubutegetsi, ingingo ya 12 n'iya 154
Itegeko Nº 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanshirize y'imanza z'inshinjabya ingingo ya 5 niya 7
Itegeko Ngenga Nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ingingo ya 243
Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ingingo ya 110

Ntamanza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nsengumuremyi Richard na Niyonsenga Egidie bashyingiranywe mu buryo bukurikije amategeko muri 2007. Imibanire yabo yaje kuba mibi, Niyonsenga Egidie ashyikiriza ikirego Inzego z`Iperereza, avuga ko Nsengumuremyi Richard yataye urugo akajya kubana n`uwitwa Uwera Sharon ko kandi akoresha nabi umutungo w`urugo. Nyuma y`iperereza, Ubushinjacyaha bwareze Nsengumuremyi Richard mu Rukiko rw'Ibanze rwa Kacyiru, icyaha cyo guta urugo, ubushoreke, gukoresha umutungo w'urugo atabyumvikanyeho n'umugore we, naho Uwera Sharon aregwa ubufatanyacyaha kuri ibyo byaha.

[2] Urukiko rw'Ibanze rwaciye urubanza RP 0572/13/TB/KCY ku wa 17/01/2014, rwemeza ko Nsengumuremyi Richard ahamwa n'icyaha cyo guta urugo hashingiwe kuba yarabyiyemereye mu Bugenzacyaha, bikanashimangirwa n'inyandiko yakozwe n'Ubuyobozi bw'Umudugudu wa Kinunga, naho icyaha cy'ubushoreke n'icyaha cyo gukoresha umutungo w'urugo bidaturutse ku bwumvikane bw'abashyingiranywe ntibyamuhama, ahanishwa igifungo cy'amezi atanu (*5mois*) gisubitswe mu gihe cy'umwaka umwe, rwemeza ko Uwera Sharon adahamwa n'ibyaha akurikiranyweho, agirwa umwere.

[3] Ubushinjacyaha bwajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Gasabo, buvuga ko Urukiko rwirengagije imvugo z`abatangabuhamya bemeje ko Nsengumuremyi Richard yaguze inzu akayandikisha kuri mushiki we Mutambarungu Gardieuse, runirengagiza ko yataye urugo akajya gukodesha kwa Uwera Sharon bari bafitanye ubucuti, uwitwa Justin akaba yaravuze ko Nsengumuremyi Richard yaguze iyo nzu ayandikisha kuri Uwera Sharon, ariko Urukiko rw`Ibanze rukabirengaho rukamugira umwere ku cyaha cyo gukoresha umutungo w'urugo bidaturutse ku bwumvikane n`uwo bashakanye.

[4] Nsengumuremyi Richard nawe yajuririye urwo rubanza avuga ko yakatiwe igihano ku cyaha cyo guta urugo yahamijwe hashingiwe ko yacyemeye mu Bugenzacyaha, kandi ngo atarigeze acyemera.

[5] Urukiko rwaciye urubanza RPA 0082/14/TGI/GSBO ku wa 13/05/2014, rwemeza ko ubujurire bwatanzwe n'Ubushinjacyaha nta shingiro bufite, rwemeza ko ubujurire bwatanzwe na Nsengumuremyi Richard bufite ishingiro, rwemeza ko urubanza N° RP 0572/13/TB/KCY rwaciwe n'Urukiko rw'ibanze rwa Kacyiru ku wa 17/01/2014 ruhindutse kuri byose, rwemeza ko ibyaha byo guta urugo, ubushoreke no gukoresha umutungo w'urugo bidaturutse ku bwumvikane bw'uwo bashyingiranywe n'ubufatanyacyaha kuri ibyo byaha bidahama Nsengumuremyi Richard na Uwera Sharon.

[6] Niyonsenga Egidie yandikiye Umuvunyi Mukuru avuga ko imikirize y'urubanza RPA 0082/14/TGI/GSBO igaragaramo akarengane yakorewe, arwohereza Perezida w'Urukiko rw'Ikirenga, nawe amaze gusuzuma raporo yashyikirijwe n'Ubugenzuzi Bukuru bw'Inkiko, anashingiye ku ngingo ya 80 y'Itegeko N° 03/2012 /OL ryo ku wa 13/06/2012 ryagengaga imikorere n'ububasha by'Urukiko rw'Ikirenga, yemeza ko urwo rubanza ruzaburanishwa.

[7] Urubanza rwaburanishijwe mu Rukiko rw’Ikirenga ku wa 15/10/2018, Ubushinjacyaha buhagarariwe na PN Ndibwami Rugambwa, Nsengumuremyi Richard yunganiwe na Me Mutalindwa Félix, Uwera Sharon yunganiwe na Me Ngilinshuti Jean Bosco, Niyonsenga Egidie uregera indishyi yunganiwe na Me Gashema Félicien hamwe na Me Bikotwa Bruce.

[8] Urubanza rwakomereje mu mizi, Niyonsenga n`abamwunganira bagaragaza impamvu z`akarengane yagiriwe, ibimenyetso n`amategeko bashingiraho, Abaregwa n’Abavoka babunganiye babyireguraho, n`Ubushinjacyaha bugira icyo bubivugaho. Urukiko rumenyesha ababuranyi ko urubanza rupfundikiwe ruzasomwa ku wa 23/11/2018, ariko mbere yo gufata icyemezo, rusanga hari umwe mu mitungo iburanwa uvugwa ko ufitwe na Mutambarungu Gardieuse mushiki wa Nsengumuremyi Richard, utari warubayemo umuburanyi; bityo rwemeza ko agomba kurugobokeshwamo. Iburanisha ry`uru rubanza ryongera gufungurwa kugirango ababuranyi bose bazagire icyo babivugaho.

[9] Urubanza rwongeye guhamagarwa kuwa 18/12/2018, ariko uwo munsi ugeze urubanza ntirwaburanishwa kubera ko umwe mu bacamanza bagize inteko yari yitabiriye indi mirimo y`Urukiko, maze iburanisha ryimurirwa ku wa 14/01/2019. Kuri uwo munsi, iburanisha ryarakomeje, ababuranyi bose bitabye, Ubushinjacyaha buhagarariwe na PN Ndibwami Rugamba, Nsengumuremyi Richard yunganiwe na Me Mutalindwa Félix, Uwera Sharon yunganiwe na Me Ngirinshuti Jean Bosco, Niyonsenga Egidie uregera indishyi yunganiwe na Me Gashema Félicien hamwe na Me Bikotwa Bruce, Mutambarungu Gardieuse yunganiwe na Me Bokanga Aimé na Me Kananga Protogene.

[10] Iburanisha ritangiye Mutambarungu Gardieuse na Abavoka bamwunganira batanze inzitizi y’uko uwo bunganira atagomba kugobokeshwa mu rubanza ku rwego rwa nyuma, mu Rukiko rw’Ikirenga, kandi urubanza ari urw’inshinjabyaha, atarigeze abazwa, ku buryo bitumvikana ukuntu mu rubanza rw’inshinjabyaha hagobokeshwamo umuntu utararezwe n’Ubushinjacyaha, ko ingingo ya 126 y’Itegeko rigenga imiburanishirize y’imanza z’inshinjabyaha yagombye gukurikizwa. Bavuga kandi ko uru rubanza rwatangiriye mu Rukiko rw’Ibanze, rujuririrwa mu Rukiko Rwisumbuye no mu Rukiko Rukuru, Ababuranyi bakaba batarigeze na rimwe basaba ko Mutambarungu Gardieuse agobokeshwa, kumugobokesha mu Rukiko rw’Ikirenga byaba binyuranye n’ibiteganywa n’ingingo ya 106, igika cya nyuma, y’Itegeko rigenga imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ivuga ko bidashoboka kugobokesha umuntu ku rwego rw’ubujurire.

[11] Ku birebana n`iyi nzitizi, Urukiko rwafashe icyemezo mu rubanza rubanziriza urundi RS/INJUST/RP 00005/2018 ku wa 23/11/2018, rwemeza ko:

i. **Ku byerekeye kuba Mutambarungu yaragobokeshwejwe ku kirego cy`inshinjabyaha.**

Mutambarungu Gardieuse yagobokeshejwe muri uru rubanza rw`akarengane ku kirego cy’imbonezamubano (*civil*) kirebana n`indishyi Niyonsenga Egidie yaregeye mu nkiko ntazigenerwe, ari nazo akurikiranye mu rubanza rw`akarengane, akaba ataragobokeshejwe ku kirego cy`inshijabyaha cyangwa nk`uwarezwe mu rubanza rw`inshinjacyaha; bityo inzitizi yatanzwe n`abunganira Mutambarungu Gardieuse ikaba nta shingiro ifite.

ii. **Ku byerekeye ishingiro ry`ukugobokeshwa kwa Mutambarungu Gardieuse.**

Urukiko rwasanze umutungo uburanwa uri mu maboko y`utari umuburanyi wagaragaye mu rubanza rw`akarengane utakwirengagizwa cyanga ngo ufatweho icyemezo nyirawo adahawe uburenganzira bwo kugira ibisobanuro atanga, bityo ko ukugobokeshwa mu rubanza ruburanishwa ku rwego rw’akarengane, ntaho kunyuranyije n`amategeko kuko iki kirego ari ikirego gisaba gusubirishamo ku mpamvu z’akarengane urubanza rwaciwe ku rwego rwa nyuma, akaba atari ubujurire busanzwe, kandi mu gihe Urukiko ruburanisha ikirego cy`akarengane rushobora kugobokesha umuntu wese rusanga ari ngombwa mu nyungu zo gutanga ubutabera bwuzuye. Kubera izo mpamvu, Urukiko rwemeje ko igobokeshwa rya Mutambarungu Gardieuse ryakozwe kuri uru rwego ku kirego cy`indishyi rifite ishingiro;

[12] Iburanisha ry’urubanza ryakomeje ku wa 11/03/2019, ryongera kwimurwa kubera ko umwe mu bacamanza yari mu mwiherero w’Abayobozi. Urubanza rwongeye kuburanishwa ku wa 25/03/2019, Mutambarungu Gardieuse ntiyari yitabye kandi yari yaramenyeshejwe itariki y`iburanisha, ariko Avoka

we nawe utari yitabye, akaba yari yaragaragarije Urukiko ko arwaye. Iburanisha ryarasubitswe ariko Mutambarungu Gardieuse acibwa ihazabu mbonezamubano kubera kutitaba, rwongera kuburanishwa ku wa 28/05/2019, ku nzitizi yatanzwe na Me Ngilinshuti Jean Bosco yerekeye ubwihane bw`Umucamanza Kayitesi Zainabo Sylvie wari uyoboye Inteko iburanisha, iburanisha ryongera gusubikwa kugirango habanze hasuzumwe ubwo bwihane.

[13] Ku wa 14/06/2019, Urukiko rwemeje ko ikirego cy'ubwihane cyatanzwe na Me Ngilinshuti Jean Bosco kitakiriwe, rwemeza ko Umucamanza Kayitesi Zainabo Sylvie wari uyoboye nteko iburanisha akomeza uru rubanza, rutegeka na Me Ngilinshuti Jean Bosco gutanga ihazabu mbonezamubano ingana na 200.000 Frw ku bwo gutanga impamvu y'ubwihane idafite ishingiro, igamije gutinza iburanisha nkana ; iburanisha rirakomeza riranapfundikirwa, isomwa ry'urubanza rishyirwa kuwa 06/09/2019, uwo munsi ugeze isomwa ririmurwa kuko hari ibyo urukiko rwari rugisuzuma, ryimurirwa kuwa 20/09/2019.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Ibyerekeye inzitizi zo kutakira ikirego

1. Kumenya niba ibyaha Nsengumuremyi Richard aregwa byarashaje.

[14] Me Mutalindwa Félix avuga ko icyaha cyo guta urugo Nsengumuremyi Richard akurikiranyweho cyashaje, kuko Umushingamategeko mu ngingo ya 243 y'Igitabo cy'amategeko ahana ibyaha[1], yateganyaga ko gihanishwa amezi atatu ariko atageze kuri atandatu, akaba asanga harabaye ubuzime bwacyo.

[15] Me Mutalindwa Félix avuga ko asanga icyaha cyo gukoresha umutungo w'urugo bidaturutse k'ubw'umvikane bw'abashakanye nacyo cyarashaje akabishingira ko uwasabye ko urubanza rusubirwamo agaragaza ko icyaha gihanishwa ingingo ya 241 y'Itegeko Ngenga Nº 01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha mu Rwanda, kandi iyo ngingo ikaba ivuga ko icyo cyaha gihanishwa igihano cy'amezi atatu ariko ntikirenze amezi atandatu. Me Mutalindwa Félix asanga rero ko hashingiwe kuri iyo ngingo, igahuzwa n'igihe icyaha cyakorewe nacyo cyashaje kuko kibarirwa mu byaha byoroheje (*Contrevention*).

[16] Me Mutalindwa Félix agaragaza ko n'icyaha cy'ubushoreke barega uwo yunganira cyashaje kuko icyaha uregera indishyi avuga usanga giteganywa n'ingingo ya 248 y'Itegeko Ngenga ryavuzwe haruguru, kikaba gihanishwa igihano cy'amezi atandatu ariko ntikirenze imyaka ibiri, ko abihuje n'igihe cyaba cyarakorewe, asanga cyarashaje.

[17] Me Gashema Félicien ntiyemeranya na mugenzi we uvuga ko habayeho ubusaze bw'ibyaha biregwa uwo yunganiye kubera ko ``*procédure*`` y'imanza z'akarengane asanga ari ``procédure`` idasanzwe, bityo ko ibijyanye n'ubusaze bw'ibyaha byakagombye kuba byaravuzwe mu manza baburanye bigafatwaho icyemezo. Anavuga ko uwatanze inzitizi avuga ``*fourchette*`` y'ibihano ariko ntagaragaze ko habayeho ubusaze bw'ibyaba baregwa, anavuga ko ibyaha byose baregwa *fourchette*`` y'ibihano byabyo iri hagati y'amezi atandatu n'imyaka ibiri akaba asanga birenze ``*contravention*``, bityo agasaba ko inzitizi zabyukijwe zitahabwa ishingiro kuko ibyo avuga nta bimenyetso abitangira.

Uhagarariye Ubushinjacyaha we asanga ikijyanye n'ubusaze bw'ibyaha yabiharira ubushishozi bw'Urukiko, avuga ko mu bisanzwe iyo icyaha kidakurikiranywe kigeza igihe kigasaza, agaragaza ko muri uru rubanza uwatanze iyo nzitizi atigeze agaragaza igihe ubwo busaze bwabereyeho.

UKO URUKIKO RUBIBONA

[18] Urukiko rurasanga inzitizi yatanzwe na Me Mutalindwa Félix wunganira Nsengumuremyi Richard avuga ko ibyaha akurikiranyweho byashaje ku buryo atabiburanishwaho nta shingiro zifite, kuko

[1]Itegeko Ngenga nº 01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha mu Rwanda

kugirango ubusaze bw'ibyaha bubarwe, hashingirwa ku gihe ibyaha byakorewe, hakanashingirwa no kuba nta kurikiranacyaha ryabayeho nk'uko biteganywa n'ingingo ya 5 n'iya 7 z'Itegeko Nº 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanshirize y'imanza z'inshinjabya ryakoreshwaga mu gihe uru rubanza rwaburanishwaga.

[19] Muri uru rubanza, ibyaha Nsengumuremyi Richard aregwa yabikurikiranyweho n'inzego z`iperereza kuwa 18/01/2013, arabazwa, abyisobanuraho, biraburanishwa n'imanza ziracibwa, n'uru rubanza rw'akarengane rukaba ruri mu mu morongo w'imanza zaciwe mu nzira z'ubujurire ziteganyijwe n'amategeko. Bityo, Urukiko rukaba rutabona aho Nsengumuremyi Richard n'abamwunganira bahera bavuga ko ibyaha aregwa byashaje kandi bitarigeze bireka gukurikiranwa kuva byakorwa.

2. Kumenya niba hari uruhare Ubushinjacyaha bufite muri uru rubanza.

[20] Me Ngilinshuti Jean Bosco aburana agaragaza ko urubanza rusubirishwamo ku mpamvu z'akarengane zagaragajwe n`uregera indishyi, asobanura ko Ubushinjacyaha bwanyuzwe kubera ko butigeze bunajyana urwo rubanza ku Muvunyi, akaba asanga nta nyungu n`ububasha (*intérêt* na *qualité*) bufite muri uru rubanza, bukaba butagaruka mu Rukiko ku bijyanye n'ibihano, ko rero asanga hasuzumwa gusa ikijyanye n'indishyi zasabwe na Niyonsenga Egidie gusa.

[21] Uhagarariye Ubushinjacyaha avuga ko asanga bufite uruhare muri uru rubanza hashingiwe ku ngingo ya 63 ya COCFJ kuko urubanza runafite ``*Role Penal*``, asobanura ko bugomba kuba buhari mu iburanisha ryarwo bukagira n'icyo buvuga bugaragaza niba ibyaha byarabayeho cyangwa se bitarabayeho, indishyi zigasuzumwa ari uko hari icyaha cyakozwe.

UKO URUKIKO RUBIBONA

[22] Ku birebana n`iburanisha ry`ibirego bisaba gusubirishamo urubanza ku mpamvu z`akarengane, ingingo ya 63 y`Itegeko rigena ububasha bw`Inkiko iteganya ko: Iyo Urukiko rw`ikirenga cyangwa urundi rukiko Perezida w`Urukikorw`Ikirenga agena, rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe.

[23] Iyi ngingo yumvikanisha ko niyo Urukiko rusanga akarengane kasabiwe gusuzumwa atari agashingiye ku itangwa ry`ibihano ubwabyo mu gihe atari Ubushinjacyaha bwajuriye cyangwa ngo busabe isubirishamo ry`urubanza ku mpamvu z`akarengane, Ubushinjacyaha nabwo bugomba kurugarukamo nk`undi muburanyi wese warubayemo, cyane ko ishingiro ry`indishi zisabwa ritagaragara hatabanje gusuzumwa imikorere y'ibikorwa bigize icyaha zishingiyeho kugira ngo hagaragare ko byabayeho koko, kandi kubigaragaza bikaba ari inshingano mbere na mbere z`Ubushinjacyaha, ariko bukaba butagomba kubisabira ibihano kimwe nuko Urukiko rutemerewe ku bigena ku bwarwo mu gihe ari indishyi zaregewe gusa. Ku birebana n`uru rubanza, inzitizi irebana n`iburabubasha n`inyungu by`Ubushinjacyaha nta shingiro ifite.

3. Kumenya niba ikirego cy`ubufatanyacyaha cyatanzwe n'Ubushinjacyaha kuri Uwera kitaragombaga kwakirwa.

[24] Me Ngilinshuti Jean Bosco yatanze inzitizi agaragaza ko ikirego cy'Ubushinjacyaha kuri Uwera Sharon kitagombaga kwakirwa. Asobanura ko harebwe '*acte d'accusation*', Uwera Sharon aregwa icyaha cy'ubufatanyacyaha mu gusesa umutungo w'urugo kuko bavuga ko yaguriwe inzu na Nsengumuremyi Richard mu mutungo yari asangiye na Niyonsenga Egidie, akaba asanga yarakurikiranywe hashingiwe ku ngingo za 241, 248 na na 248 z'Itegeko ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha, akaba asanga ibikorwa bamurega atarabikoze, ko ariko niyo aza kuba yarabikoze, atari gukurikiranwa kuko Itegeko rihana ibyaha ryakoreshwaga icyo gihe ritahanaga icyaha cyo gukoresha umutungo w'urugo bidaturutse ku bwumvikane bw'abashakanye. Akomeza avuga ko Itegeko rihana icyo cyaha ryagiyeho ku wa 02/05/2012 risohoka mu igazeti ya Leta ku wa 14/06/2012 kandi ibikorwa bamurega byarabaye mu kwezi kwa kabiri 2012, ibyo akabishingira ku ngingo ya 2 n'iya 3 z'Itegeko No 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y`imanza z`inshinjabyaha. rivuga ko umuntu adashobora gukurikiranwa hashingiwe ku itegeko ritariho. Yongeraho kandi ko mu

gihe ikirego cy'inshinjabyaha kitashoboraga kwakirwa, n'ikirego cy'indishyi kigishingiyeho kitari kubaho, bityo akaba asanga ikirego cy'akarengane kitaragombaga kubaho.

[25] Me Bikotwa Bruce avuga ko iyo nzitizi atari ndemyagihugu, ko asanga ntacyo uwayitanze anenga Urukiko, ko atagaragaza niba nta bubasha rufite, niba uwasabye gusubirishamo urubanza ku mpamvu z'akarengane nta nyungu, ububasha n'ubushobozi afite cyangwa ngo agaragaze ko uwatanze ikirego atabikoze mu gihe giteganywa n'amategeko, byongeye kandi, akaba asanga iyi nzitizi Me Ngilinshut atarayitangiye igihe.

[26] Umushinjacyaha asanga inzitizi yatanzwe na Me Ngilinshuti Jean Bosco yo kuba ikirego cy'Ubushinjacyaha kitari kwakirwa nta shingiro ifite kuko nta busaze bw'ikurikiranacyaha bwari bwakabeho hashingiwe ku biteganywa n'ingingo ya 6 ya y`Itegeko ry`imiburanishirize y`imanza nshinjabyaha iteganya igihe cyo kubara ubusaze bw'ikurikiranacyaha. Asobanura ko asanga igihe ibikorwa bigize icyaha byakorwaga ku cyaha cyarezwe Uwera Sharon hari hariho itegeko ribihana kuko icyo cyaha cyakozwe mu gihe kirekire, maze gitsotsobwa igihe cy'igurwa ry'inzu.

[27] Ibyo Umushiinjacyaha abisobanura avuga ko inzu iburanwa yaguzwe mu kwezi kwa 02/2012, iza guhererekanywa Itegeko ryo ku wa 02/05/2012 rishyiraho Igitabo cy`amategeko ahana ryaragiyeho, kuko ryasohotse mu igazeti ya Leta ku wa yayiguriye Uwera Sharon mbere y'Itegeko rishya, igikorwa cya nyuma kijyanye no kuyimuha cyabaye mu kwezi kwa munani Itegeko rishya ryavuzwe haruguru ryaragiyeho, bikaba bigaragaza ko '*intention délictueuse*' ya nyuma yabaye Itegeko rihana icyo cyaha ryarasohotse, akaba asanga nta mpamvu atarikugikurikiranwaho kuko icyaha cyakozwe itegeko rigihana ritariho ariko cyiza gutsotsobwa Itegeko rigihana ryarashyizweho cyane ko igikorwa cya nyuma cyo kwegurira inzu Uwera Sharon cyarabaye Itegeko rihana ryaragiyeho.

[28] Umushinjacyaha asoza avuga ko '*acte d'accusation*' iri kuri cote ya 103 igaragaza ibyaha Nsengumuremyi Richard na Uwera Sharon baregwaga, n`igihe babikoreye, ariko itavuga itariki ibyaha byakoreweho, ahubwo havugwa ``periode`` ibyaha byakorewemo kandi muri iyi ``periode`` icyaha Uwera Sharon na Nsengumuremyi Richard baregwaga, Itegeko rigihana rikaba ryari ryarasohotse.

[29] Me Mutarindwa Félix we avuga ko inzitizi yatanzwe n'uwunganira Uwera Sharon nta shingiro ifite, ko yemeranywa n'ibyavuzwe n'Umushinjacyaha hamwe n'uregera indishyi, kandi nawe asanga inzitizi yatanzwe muri uru rubanza itatangiwe igihe kuko *procedure* y'iburanisha ry'imanza z'akarengane ari *speciale*.

[30] Me Ngilinshuti Jean Bosco yagize icyo avuga ku mvugo z`abandi baburanyi cyuko icyaha Uwera Sharon akurikiranyweho ari ``infraction continue``, asobanura ko ``acte d'accusation`` ariyo iregera Urukiko, icyaha kivugwa kikaba cyarakozwe gusa ku wa 05/12/2012, ko kitatangiye mbere yaho, akaba asanga atari '*infraction continue*'. Avuga kandi ko ibyavuzwe ko inzitizi yatanze atari ndemyagihugu, itaranatangiwe igihe nabyo atari ukuri, hagendewe ku biteganywa n'ingingo ya 69 ivuga ko urubanza rusubirwamo ku mpamvu z'akarengane rusuzumwa bundi bushya. Ashimangira ko uwo yunganira ataregwa icyaha gikozwe mu gihe kirekire, ko ahubwo aregwa ubufatanyacyaha ku cyaha cyabaye rimwe gusa.

UKO URUKIKO RUBIBONA

[31] Urukiko rw'Ikirenga rurasanga ibyaha Nsengumuremyi Richard na Uwera Sharon baregwa, byarakozwe kuva 05/07/2011 kugeza mu mwaka wa 2013 nk'uko bigaragazwa na ``acte d'accusation`` yo ku wa 23/05/2013. Muri ibyo byaha hakaba harimo icyaha cyo guta urugo, ubushoreke, gukoresha umutungo w'urugo bidaturutse ku bwumvikane bwa Nsengumuremyi n`uwo bashyingiranywe, kandi bikaba bigaragara ko muri iyo '*acte d'accusation*' Nsengumuremyi Richard aregwa hamwe na Uwera Sharon, ndetse bakaba baranabasabiraga ibihano kuri ibyo byaha.

[32] Urukiko rw'Ikirenga rurasanga inzitizi yatanzwe na Me Ngilinshuti Jean Bosco yo kutakira ikirego cy'Ubushinjacyaha kuri Uwera Sharon kuko icyaha bamurega igihe bavuga cyakorewe nta tegeko

ryari rihari rigihana, nta shingiro ifite kuko '*acte d'accusation*' ku wa 23/05/2013 igaragaza ko icyaha Uwera Sharon yarezwe mu Rukiko cyakozwe kuva mu 05/07/2011 kugeza mu mwaka wa 2013, kandi itegeko rigihana rikaba ryaragiyeho ku itariki ya 02/05/2012, rigasohoka mu igazeti ya Leta ku wa 14/06/2012, bivuze ko mu gihe cyatangiraga gukorwa nta tegeko rigihana ryari rihari ariko rikaba ryaragiyeho igikorwa kigize icyaha kigikomeza. Koko rero, Urukiko rusanga igihe igikorwa cya nyuma (ni ukuvuga *mutation* y`inzu Uwera Sharon yaguriwe na Nsengumuremyi Richard cyabaga, Itegeko rigihana ryariryaragiyeho, bityo Uwera Sharon n'umwunganira bakaba ntaho bahera bavuga ko nta tegeko ryahanaga icyaha baregwa ryari ririho ku buryo batagikurikiranwaho.

4. **Kumenya niba ikirego kirebana n`inzu cyatanzwe na Niyonsenga ari ikirego gishya, kitagomba gusuzumwa muri uru rubanza**

[33] Me Ngilinshuti Jean Bosco yatanze indi nzitizi yo kutakira ikirego cya Niyonsenga Egidie gisaba guhabwa imwe mu mazu abiri kuko ari ikirego gishya hashingiwe ku ngingo ya 154 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'izubutegetsi. Asobanura ko urubanza rugitangira Niyonsenga Egidie yaregaga asaba Nsengumuremyi Richard indishyi zingana na 3.000.000 Frw zikomoka ku cyaha yamukoreye, ko ariko bigeze mu rwego rw'akarengane, mu mwanzuro we asaba ko mu nzu ebyiri ziburanwa (iyahawe Mutambarungu Gardieuse n'iyahawe Uwera Sharon) yahabwamo imwe; ibyo akaba asanga ari ikirego gishya kitagomba kwakirwa.

[34] Umushinjacyaha asanga iyi nzitizi nta shingiro ifite, kuko ingingo ya 154 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'izubutegetsi ireba ibirego bishya mu bujurire, ibyo bikaba bitajyanye na procédure y'ibiburanwa muri uru rubanza rw`akarengane.

[35] Me Mutarindwa Félix nawe asanga iyo nzitizi yo kutakira ikirego gishya kuko kigamije gusaba inzu kandi urubanza rutangira hakaba hararegewe indishyi gusa, nta shingiro ifite kubera ko mu gihe umuntu aregeye umutungo we cyangwa umutungo afiteho uburenganzira, gusaba indishyi bidakuraho ko n`umutungo akurikiranye yawuhabwa.

[36] Me Bikotwa Bruce we asanga iyo nzitizi nta shingiro ryayo, ikirego kijyanye n`amazu atari ikirego gishya kubera ko Niyonsenga Egidie yagitanze kuva muri CID, akaba asanga atari ikirego gishya kigaragaye bwa mbere mu rubanza rw'akarengane, ndetse kuba atarahawe ayo mazu akaba aribyo byatumye asubirishamo urubanza ku mpamvu z'akarengane.

UKO URUKIKO RUBIBONA

[37] Dosiye y`urubanza igaragaza ko mu rubanza RP 0572/13/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru ku wa 17/01/2014, ndetse no mu rubanza RPA 0082/14/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 13/05/2014, hose amazu avugwa muri uru rubanza yagiye aburanywaho, ariko inkiko ntizagira icyemezo ziyafataho.

[38] Urukiko rw'Ikirenga rurasanga rero inzitizi yatanzwe na Me Ngilinshuti Jean Bosco nta shingiro ifite kuko ikirego cy'amazu atari gishya muri uru Rukiko nk'uko dossier y`urubanza ibigaragaza kubera ko mu manza zabanje, amazu yaburanyweho, ntihagira icyemezo kiyafatwaho, ahubwo akaba ari imwe mu mpamvu zatumye Niyonsenga Egidie yaratanze ikirego cy`akarengane, bityo akaba ntaho yanyuranije n'ibiteganywa n'ingingo ya 154 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'izubutegetsi ivuga ko nta birego bishya bitangwa ku rwego rw'ubujurire.

B. Ibibazo bigize urubanza mu mizi.

1. **Kumenya niba hari ibimenyetso byirengagijwe bihamya Nsengumuremyi Richard igikorwa cyo guta urugo.**

[39] Me Gashema Félicien avuga ko impamvu basubirishijemo ku mpamvu z'akarengane urubanza RPA 0082/14/TGI/GSBO ari uko Urukiko rutigeze ruha agaciro ibimenyetso barugaragarije byerekana ko Nsengumuremyi Richard yataye urugo, muri ibyo avugamo inyandiko yatanzwe n'Ubuyobozi bw'Umudugudu wa Kinunga yo ku wa 20/01/2013 igaragaza ko ku wa 05/07/2011 yataye urugo ku mpamvu itazwi, anavuga ko ikindi kimenyetso kigaragaza ko Nsengumuremyi Richard yataye urugo ari uko nyir'inzu bakodeshaga witwa Rukara Francois yirukanye Niyonsenga Egidie muri iyo nzu kubera kumara igihe atishyura ubukode bitewe n'uko umugabo we yataye urugo.

[40] Nsengumuremyi Richard yiregura ku cyaha cyo guta urugo, avuga ko atacyemera kuko raporo y'ubuyobozi ishingirwaho atayemera, cyane ko ubwo buyobozi ngo butigeze bumushaka ngo bumubure, akaba asanga ntakimenyetso bafite kibigaragaza uretse kuba barumvise ibyo babwiwe n'umugore we Niyonsenga Egidie bakaba aribyo bashingiraho bandika ko yataye urugo.

[41] Ubushinjacyaha buvuga ko hari ibimenyetso bihamya Nsengumuremyi Richard icyaha cyo guta urugo byirengagijwe, muri ibyo ngo harimo imvugo z'uregwa ubwo yabyemeraga mu ibazwa rye, mu nyandiko mvugo ye, aho yemeye ko yavuye mu rugo mu kwezi kwa karindwi (*juillet)* akarugarukamo mu kwa cyenda (*Septembre*), ibi bikaba bigaragaza ko atujuje inshingano ze.

UKO URUKIKO RUBIBONA.

[42] Dosiye y`urubanza igaragaza inyandiko y'Ubuyobozi bw'Umudugudu wa Kinunga yo ku wa 20/01/2013 yemeza ko Nsengumuremyi yataye urugo. Dosiye igaragaza kandi ko mu rubanza rwaciwe n`Urukiko Rwisumbuye rwa Gasabo ari narwo rwasabiwe gusubirishwamo ku mpamvu z`akarengane, Urukiko rutagize icyo ruyivugaho, ahubwo rwemeza ko hatabayeho guta urugo.

[43] Urukiko rw'Ikirenga rurasanga koko Urukiko Rwisumbuye rwa Gasabo rwarirengagije ikimenyetso kiri mu dosiye ntirugishingireho cyangwa ngo rugire icyo rukivugaho, mu gihe nyamara bigaragara ko cyamaraga impaka ku bijyanye n'ikibazo cyo guta urugo cyasuzumwaga, kandi Nsengumuremyi akaba ataratanze impamvu zifatika zibivuguruza kuko n'ibyo yireguza ko yasanze umugore atakiri aho baribatuye byatewe n'uko yirukanwe munzu kuko yari amaze amezi abiri atishyura ubukode nk'uko bigaragara muri raporo y'umudugudu.

[44] Kuba Nsengumuremyi Richard yarataye urugo kandi bishimangirwa no kuba mu ibazwa rye yaremeye ko yamaze ukwezi kurenga atari mu rugo, kuko yivugiye ko yahavuye mu kwezi kwa karindwi akagaruka mu kwa cyenda, ibyo bikaba biteganywa kandi bigahanishwa ingingo ya 243 y'Itegeko nº 01/2012 ryo ku wa 02/05/ 2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga igihe urubanza rwaburanishwaga, ivuga ko Umwe mu bashyingiranywe uta urugo rwe mu gihe kirenze ukwezi kumwe nta mpamvu zikomeye kandi akihunza ibyo ategetswe byose cyangwa bimwe, bishingiye ku bubasha bwa kibyeyi cyangwa ku bwishingizi bw`uburere bwemewe n`amategeko, ahanishwa igifungo kuva ku mezi atatu ariko kitarenze atandatu n'ihazabu y'amafaranga y'u Rwanda kuva ku bihumbi magana abiri (200.000)kugeza kuri miliyoni eshatu (3.000.000) cyangwa kimwe muri ibyo bihano .

[45] Urukiko rukaba rusanga rero ntaho Nsengumuremyi yahera anenga iyo nyandiko yo ku wa 22/1/2013 yanditswe n`Ubuyobozi bw`Umudugudu wa Kinunga bwemeza ko Nsengumuremyi yataye urugo kuva le 05/7/2011 ku mpamvu zitazwi, kuko ibyo ivuga bihura n'ibyo yiyemereye mu ibazwa rye nk'uko byasobanuwe mu gika kibanziriza iki.

[46] Naho ku bijyanye n`ibisobanuro Nsengumuremyi atanga byatumye ataba mu rugo icyo gihe cyose, Urukiko rusanga nta shingiro byahabwa, kuko ibisobanuro yireguza bitagize impamvu ihagije yo guta urugo.

2. Kumenya niba hari ibimenyetso byirengagijwe bihamya Nsengumuremyi Richard ibikorwa bigize icyaha cyo gukoresha umutungo bidaturutse ku bwumvikane na Niyonsenga Egidie bashakanye mu buryo bw'ivangamutungo rusange.

[47] Me Gashema Félicien na Me Bikotwa bavuga ko Urukiko rutahamije Nsengumuremyi Richard icyaha cyo gukoresha umutungo bidaturutse ku bwumvikane bw'abashakanye kandi rwari rwashyikirijwe ibimenyetso; ibyo bimenyetso akaba ari ibi bikurikira:

a. ubuhamya bwa Mukarubega Helene wagurishije inzu ye na Nsengumuremyi Richard 23.000.000 Frw hanyuma agategekwa ko handikwaho ko iguzwe na mushiki wa Nsengumuremyi Richard witwa Mutambarungu Gardieuse, nyamara ubwishyu bwatanzwe na Nsengumuremyi Richard dore ko ariwe wamuhaye sheki ya 20.000.000 Frw, akanamwishyura 2.800.000 Frw, akamusigaramo 200.000 Frw.

b. ubuhamya bwa Ntakontagize Florence wari umunyamabanga nshingwabikorwa w'Akagali ka Nyagatovu wavuze ko Nsengumuremyi Richard yaje gushaka inzu yo kugura kwa Mukarubega iri mu kibanza nº UPI 656, anavuga ko ubwishyu bwatanzwe na Nsengumuremyi Richard ariko amasezerano akandikwaho Mutambarungu Gardieuse.

[48] Me Gashema Félicien na Me Bikotwa bavuga ko Nsengumuremyi Richard yanaguriye uwitwa Uwera Sharon inzu ahitwa Kibagabaga, ibyo akabitangira ibimenyetso bikurikia:

a. imvugo za Munyeragwe Justin wagurishije inzu ye mu kwezi kwa kabiri 2012, akemeza ko Nsengumuremyi Richard yazanye na Uwera Sharon yitaga fiancée we, hamwe n'umukomisiyoneri, bakumvikana amafaranga 28.000.000frw; ariko mu gukora amasezerano y'ubugure bakandika ko Uwera Sharon ariwe uguze nyamara amafaranga akayishyurwa na Nsengumuremyi Richard.

b. ubuhamya bwa Ntampaka Richard wari komisiyoneri w'inzu yari iya Munyaneza Justin wemeje ko ariwe warangiye Nsengumuremyi Richard iyo nzu, anavuga ko yabanje kwishyura 25.000.000 Frw, nyuma amuha andi angana na 3.000.000 Frw yari asigaye, anagaragaza ko ayo mafaranga yayamuhaye mu ntoki.

[49] Me Gashema Félicien na Me Bikotwa bakomeza bavuga ko mu gukora icyaha cyo gukoresha umutungo bidaturutse ku bwumvikane bw'abashakanye, Nsengumuremyi Richard yanatwaye imodoka eshatu (01 Fusso, RAV4 na LUXUS) bari basangiye n'umugore we Niyonsenga Egidie, bavuga ko ubu Nsengumuremyi Richard ariwe urimo kuzibyaza umusaruro wenyine, bakaba basaba ko izo modoka zagaruka mu mutungo bari basangiye bakazigabana kuko bamaze kwemererwa ubutane nk'uko byemejwe mu rubanza RCA 00190/2016/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 27/11/2014.

[50] Nsengumuremyi Richard we yiregura avuga ko ibivugwa na Niyonsenga Egidie nta shingiro bifite, avuga ko ntanahamwe agaragaza ko uwo mutungo urugo rwabo rwigeze ruwutunga, ntanagaragaze umurage cyangwa impano urugo rwabo rwaba rwarahawe, ndetse ngo akaba atanagaragaza akazi yagiye akora mu myaka babanye kaba karinjije uwo mutungo. Avuga ko Company Niyonsenga Egidie yitsitsaho amafaranga yayishinze atavuye mu mutungo w'urugo rwabo, ko amafaranga yagiye aboneka muri iyo Company ari ayatanzwe na ba nyiri akazi, ayo mafaranga akaba ariyo yagiye agurwamo imodoko nk'igikoresho cyifashishwa mu kazi.

[51] Nsengumuremyi Richard yiregura avuga ko atemera ubuhamya bwatanzwe na Mukarubega Helene kuko mu gihe mushiki we yazaga kugura iyo nzu ngo yamuhaye amafaranga akanga kuyakira kuko bwari bwije ngo nyuma Richard arayatwara baza kumwishyura bukeye bwaho, ibyo ngo bikaba bigaragazwa n'uko Nsengumuremyi yabonye bwije agahamagara kuri Fina Bank, agashyira ayo mafaranga kuri *compte* ya *United Contractors Company* afatanyije n`umugore. Avuga ko uwagurishije inzu yishyuwe sheki ingana n'ayo mafaranga, itanzwe n'abaguze aribo Muhirwa Pacifique na Mutambarungu Gardieuse. Avuga kandi ko ubuhamya bwa Ntakobatagize Florence nta gaciro bwahabwa kuko yivugira ko mu gihe cy'ubugure bw'iyo nzu atari ahari kimwe n'ubuhamya bwa Bagabo Stephen, kuko nawe yivugiye ko inzu igurwa atari ahari.

[52] Nsengumuremyi Richard yemera ubuhamya bwa Munyeragwe Justin kuko inzu baguze iherereye Kibagabaga ariwe wayiguze, anagaragaza ko amafaranga yo kuyigura yayavanye kuri Fina Bank; amwe akaba yarayishyuwe ku kazi yagombaga gukora mu Karere ka Kirehe n'aka Kamonyi, ibyo bikaba

bigaragazwa na *Historique* ya *Company* ye (*United Contractor*) andi akagaragaza ko yayavanye mu Karere ka Ngororero aho yubakaga Umurenge wa Ngororero. Avuga kandi ko amaze kwishyura iyo nzu yasabye Uwera Sharon ko yamwandikwaho kubera inyungu yamushakagaho yo kumukopa ibikoresho aho yakoraga muri Roto.

[53] Me Ngilinshuti Jean Bosco wunganira Uwera Sharon avuga ko nta cyaha cy'ubufatanyacyaha ku cyaha cyo gukoresha umutungo bidaturutse ku bwumvikane bw'abashakanye Uwera Sharon yakoranye na Nsengumuremyi Richard. Agaragaza ko ikimenyetso cya sheki ya 20.000.000 Frw Nsengumuremyi yahaye Mukarubega ivuye kuri compte ya United Contractor ntaho ahuriye nayo, anakomeza avuga ko inzu yaguzwe na Uwera Sharon ku giti cye, akaba asanga nta ruhare na ruto rwa Nsengumuremyi Richard rurimo, amasezerano y'ubugure akaba agaragaza ko uwaguze ari Uwera Sharon kandi n'icyemezo cy'umutungo kikabigaragaza, akaba asanga abareze batagaragaza amategeko yirengagijwe n'aho yari gukoreshwa, agasoza asaba ko hakwemezwa ko ntakarengane kabaye mu rubanza rusabirwa gusubirishwamo.

[54] Ubushinjacyaha bwo busanga iki cyaha Nsengumuremyi Richard atagihakana kuko mu kwiregura kwe avuga imitungo yabo irimo Company, inzu, imodoka ariko imodoka ya Luxus akaba atayemera. Buvuga ko yaba imyenda cyangwa inyungu zije mu rugo ariwo mutungo w'urugo, bukaba busanga ibyakozwe na Nsengumuremyi Richard nta na kimwe yigeze yumvikanaho n'uwari umugore we Niyonsenga Egidie. Busaba kandi ko na Uwera Sharon yakurikiranwa hashingiwe ku gika cya kabiri cy'ingingo ya 241 y'Itegeko Nº 01/2012 ryo ku wa 02/05/ 2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga igihe urubanza rwaburanishwaga kuko yemeye kwakira umutungo w'umugabo azi neza ko bidaturutse ku bwumvikane bw'abashyingiranywe.

[55] Mutambarungu Gardieuse yiregura avuga ko inzu bamurega ari iye n'umugabo we kuko bayiguze na Mukarubega Helene ku mafaranga angana na 23.000.000 Frw. Asobanura ko mbere bamwishyuye 20.000.000 Frw, ubwa kabiri bamwishyura 2.000.800 Frw, ko ubwa nyuma bamwishyuye ayari asigaye angana na 200.000 Frw. Abajijwe uburyo bayishyuye, avuga ko bajya kumwishyura bwari bwije akabasaba ko ko kuyashyira bajya muri Banki, bajyayo ariko basanga ifunze. Avuga ko ubwo aribwo Nsengumuremyi Richard yabafashije akayashyira kuri compte ya campany ye, ariko agaha Mukarubega Helene sheki kuko ngo yagombaga kwereka abana ko bamwishyuye cyane ko bari bamaze gukora amasezerano y'ubugure, anagaragaza ko umunsi bakoreyeho amasezerano bihura n'umunsi bahereyeho Nsengumuremyi Richard ayo mafaranga akayashyira kuri compte ye.

[56] Me Karenzi Jean Paul amwunganira avuga ko inzu Mutambarungu Gardieuse yayiguze afatanije n'umugabo we, akaba yaranagaragarije Urukiko uko yagiye yishyura, anavuga ko yagaragaje ko impamvu bahaye ayo mafaranga Nsengumuremyi Richard, ari impamvu z'umutekano wayo kuko bwari bwije, akaba asanga Urukiko nta mpungenge rwakagombye kugira kuri iyo nzu kuko ba nyirayo bayitunze banayifitiye ibyangombwa.

[57] Nsengumuremyi Richard yiregura avuga ko igihe Mutambarungu Gardieuse n'umugabo we baguraga iyo nzu yari hamwe nabo, haza kuvuka ikibazo cy'umutekano w'amafaranga bari bahaye Mukarubega Helene utarashatse kuyararana iwe, kandi Banki zari zafunze, maze we ahamagaye kuri banki i Remera, bamwemerera ko yayazana akayashyira kuri compte ye. Avuga ko amasezerano y'ubugure kimwe na sheki yahaye Mukarubega ari ibyo ku wa 03/02/2012, ko nyuma yo kuyashyira kuri compte ye, mu gitondo cyaho Mukarubega yafunguye ``compte`` muri iyo Banki (*Fina Bank)* bahita bamushyiriraho ayo mafaranga (20.000.000 Frw). Akomeza avuga ko iyo nzu atariwe wayiguze, ko ahubwo yaguzwe na Mutambarungu Gardieuse n'umugabo we. Anavuga ko company ivugwa muri uru rubanza ari iye ntaho ihuriye na Niyonsenga Egidie, kuko n'igihe cyo gutandukana batagabanye amafaranga ayiriho.

[58] Niyonsenga Egidie yaburanye avuga ko ibyavuzwe na Mutambarungu Gardieuse ataribyo kuko asanga amafaranga yaguze inzu asangiye n'umugabo we yaravuye kuri compte ya campany asangiye n'umugabo we Nsengumuremyi Richard kuko ku wa 03/02/2012 aribwo Nsengumuremyi Richard yishyuwe 20.000.000 Frw n'Akarere ka Ngororero bikaba bihura n'ibyo umutangabuhamya Mukarubega Helene yasobanuye: ko amafaranga yayishyuwe na Nsengumuremyi Richard. Avuga ko nta na hamwe

hagaragara ko iyo sheki yatanzwe na Mutambarungu Gardieuse, kandi ngo na ``historique de compte`` ye n'umugabo we ikaba itagaragaza ko bigeze gutunga amafaranga bavuga baguze inzu na Mukarubega Helene.

[59] Me Bikotwa Bruce umwunganira asanga ibivugwa na Mutambarungu Gardieuse n'abamwunganira nta kuri kurimo kubera impamvu zikurikira:

a. Hari inyandikomvugo ya Mukarubega Helene yakozwe n'ubugenzacyaha ku wa 14/01/2013 igaragara kuri cote ya 21 aho asobanura uburyo yagurishije inzu ye na Nsengumuremyi Richard azanywe n'abakomisioyoneri (*commissionnaires*) bakayigura 23.000.000 Frw ariko mu masezerano bakayandika kuri Mutambarungu Gardieuse. Ibyo ngo byumvikanisha ko Nsengumuremyi Richard ariwe washatse inzu akaba ari nawe wayiguze kuko ariwe wishyuye.

b. Company ya Nsengumuremyi Richard yishyuwe n'Akarere ka Ngororero ku wa 03/02/2012 amafaranga angana na 20.000.000 Frw, ku wa 04/02/2012 hakorwa operation yo kwishyura Mukarubega Helene; bityo akaba asanga amafaranga yishyuwe ari aya ``company`` kandi akaba yari iy'umuryango kuko Nsengumuremyi Richard ajya gufunguza company yavuze ko ari iy'umuryango, akanavuga ko yashakanye na Niyonsenga Egidie mu buryo bwemewe n'amategeko.

[60] Me Mutalindwa wunganira Nsengumuremyi Richard we asanga urega ariwe ugomba kugaragaza ibimenyetso, akaba asanga uvuga ko Nsengumuremyi Richard yaguriye inzu mushikiwe ariwe wakagombye kubitangira ibimenyetso bakabyireguraho. Akomeza avuga ko inyandikomvugo ya Mukarubega Helene igaragaza ko mu musozo wayo yavuze ko atazi uwaguze inzu, akaba asanga kuba ubushinjacyaha bwararetse kurega uwo yunganiye ari uko bwasanze nta bimenyetso bihari bigaragaza ko inzu atariwe wayiguze.

[61] Me Mutalindwa avuga ko ku bijyanye n'amafaranga ya company bahuza n'igurwa ry'inzu, asanga Urukiko rwakwiyambaza droit des societés aho kuba droit familial, akaba asanga mu gihe company ihawe amafaranga yo gukora isoko aba atari ay'urugo, hakaba harebwa ``declaration fiscale`` kuko akazi iyo gakozwe inyungu ariyo iba iy'umuryango ikaba yatunga urugo, bityo akaba asanga Akarere kataroherereje amafaranga ngo abe ay'urugo ahubwo ngo akaba yari ayo gukora akazi ka company, cyane ko Niyonsenga Egidie atari actionnaire wa company ya Nsengumuremyi Richard.

[62] Me Bokanga Aimé, Me Kanaga Protogène na Me Karenzi Jean Paul bunganira Mutambarungu Gardieuse basanga operations zivugwa zarakozwe ku wa 03/02/2012 ariko ngo ntizigaragaza *chronologiquement* uko zagiye zikorwa. Avuga ko kuri compte yishyuriweho Mukarubega bigaragara ko handitseho Nsengumuremyi Richard to Mukarubega Helene akaba asanga bitandukanye na *transfert* yakozwe n'Akarere ka Ngororero. Asanga ahubwo Mukarubega Helene wagurishije adasobanukiwe ibya Banki, bityo ngo bikaba bigaragaza ko atazi uwaguze.

[63] Umushinjacyaha we asanga inzu iburanwa yaraguzwe na Nsengumuremyi Richard nk'uko byemezwa na Mukarubega Helene wagurishije. Avuga kandi ko ibyo Mutambarungu Gardieuse avuga nta kuri kurimo kuko:

a. avuga ko igihe bari bagiye gushyira amafaranga kuri compte ya Nsengumuremyi Richard yajyanye nabo kuri Banki kandi uwagurishije we agaragaza ko Mutambarungu yasigaye mu rugo.

b. Historique Bancaire ya Nsengumuremyi Richard igaragaza ko ku wa 03/02/2012 habayeho operations zigera kuri enye: hari iyashyizeho 500.000 Frw, iyashyizeho 2.000.000 Frw, hakurwaho 21.000.000 Frw, solde ye iba negatif. Kuri iyo tariki kandi District ya Ngororero yashyizeho 21.543.443 Frw, ku wa 04/02/2012, Mukarubega Helene abikuza 20.000.000 Frw hakoreshejwe sheki yavuzwe, Umushinjacyaha akaba asanga amafaranga Nsengumuremyi Richard yishyuwe n'Akarere ka Ngororero ari yo yishyuwe Mukarubega Helene.

c. Nta bushobozi Mutambarungu Gardieuse yari afite bwo kugura inzu kuko ngo hakozwe iperereza bigaragara ko yakoraga muri Faycal ahembwa 427.000 Frw nk'uko binagaragazwa na attestation de salaire ye, ndetse na historique bancaire ye ikaba igaragaza ko hagati ya 03/02/2012

na 04/02/2012 amafaranga yari kuri compte ye atari arenze 1.000.000 Frw, akaba akwiye kugaragaza aho yavanye 20.000.000 Frw.

[64] Umushinjacyaha avuga ko hari abatangabuhamya babajijwe mu gihe iperereza ryatangiraga ariko Nsengumuremyi Richard agatangira kubatera ubwoba. Avuga ko barimo uwitwa Bagabo Steven ubuhamya bwe bugaragara kuri cote 39-40-41 na Ntakontagize Florence. Aba bakaba baragaragaje uburyo Nsengumuremyi Richard yahishe umutungo umugore we Niyonsenga Egidie , anavuga ko abari bakodesheje mu nzu yaguriye Mutambarungu Gardieuse bemeje ko bishyuraga ubukode Nsengumuremyi Richard n'ubwo uwo mutungo wari wanditse mu mazina ya Mutambarungu Gardieuse.

UKO URUKIKO RUBIBONA

i. Ku birebana n'inzu ifitwe na Mutambarungu Gardieuse

[65] Dosiye y`urubanza igaragaza imvugo za Nsengumuremyi Richard n`iza Mutambarungu Gardieuse ku birebana n`umubare w`amafaranga yishyuwe nyiri inzu Mukarubega Helena n`uwayishyuye muri bo. Dosiye igaragaza kandi ubuhamya bwa Mukarubega Helena burebana n`umubare w`amafaranga yishyuwe inzu n`uwayishyuye, n`ubuhamya bw`Umukuru w`Akagari ka Nyagatovu aho inzu iri, ku bijyanye n`uwaguze inzu n`uwayanditsweho.

[66] Mu nyandikomvugo y`ibazwa rya Mutambarungu Gardieuse mu Bugenzacyaha yo kuwa 16/1/2013, ku rupapuro rwa 24, yabajijwe uko yishyuye amafaranga y`inzu yaguze na Mukarubega Helene, n'aho yayamwishyuriye, asubiza ko yari ayafite mu ntoki, ayaha Mukarubega Helene yanga kuyakira mu ntoki kuko bwari bwije, amubaza niba hari konti afite ngo ayamushyirireho, Mukarubega asubiza ko nta compte afite. Mutambarungu Gardieuse akavuga ko yagiye kuyashyira kuri ``compte`` ye asanga Banki yafunze kuko bwari bwije, ndetse n'iy'umugabo we nayo ifunze. Avuga ko icyo gihe ayo mafaranga 22,000,000 Frw yari agiye kwishyura inzu yayahaye musaza we Nsengumuremyi Richard bari kumwe, akayamubikira kuri compte ye, ko bukeye yayabikuje akayamuha nawe akayishyura Mukarubega Helene mu ntoki, akavuga ko yamusigayemo 1,000,000 Frw, akayamuha nyuma.

[67] Mu ibazwa rya Nsengumuremyi Richard mu Bugenzacyaha kuri cote ya 61 , aho yabajijwe niba ariwe waguze inzu na Mukarubega Helene, asubiza ko atariwe waguze iyo nzu, ko yaguzwe na mushikiwe Mutambarungu Gardieuse, akaba yaragiye kuyimwereka mu gihe cyo kugura. Abajijwe uruhare yagize mu kugura iyo nzu, asubiza ko mushikiwe amaze kuyibona, yamujyanyeyo igihe cyo kugura kugirango amurebere umutangabuhamya; ko hari ku mugoroba afite 22.000.000Frw bakora amasezerano ariko Mukarubega Helene yanga kubika ayo mafaranga kuko bwari bwije kandi akaba nta na compte yarafite,avuga ko Mutambarangu Gardieuse yamuhaye 20.000.000Frw ngo ayamushyirire kuri compte ye muri Fina Bank, umunsi ukurikiyeho afata ya mafaranga ayaha Mukarubega Hele nk'ubwishyu bw'ubugure bw'inzu.

[68] Ku byerekeye ubuhamya, Mukarubega Helene, mu ibazwa rye mu Bugenzacyaha ku rupapuro rwa 22 ku kibazo cy`uwo yagurishije iyo nzu iburanwa, yavuze ko yashyizeho umukomisiyoneri, abona amuzaniye Nsengumuremyi Richard bumvikana ibiciro bemeranywa ko agomba kumwishyura 23.000.000 Frw, ko Nsengumuremyi Richard yagiye akagaruka nyuma y'ibyumweru bibiri, ari kumwe na mushikiwe, ko yamwishyuye 20.000.000 Frw avuye kuri compte ya Nsengumuremyi Richard andi 3.000.000 Frw ayamusigaramo, ko yongeye kumwishyura 2.000.000 Fw ayakuye kuri compte ye, ko amasezerano y'ubugure yanditswe kuri Mutambarungu Gardieuse ariko amafaranga akaba yarayahawe na Nsengumuremyi Richard. Avuga kandi ko 800.000Frw yari asigaye, yayishyuwe na mushikiwe, wanamwishyuye na 200,000 Frw.

[69] Umutangabuhamya Bagabo Stephen, mu ibazwa rye ryo ku wa 01/9/2013, aho yasabwe gusobanura uko amasezerano y`igurwa ry`inzu rya Mukarubega Helena yagenze, yagize ati: Nsengumuremyi Richard yaje kugura parcelle no UPI 656 iri mu Mudugudu w`Ijabiro, agura n`umukecuru witwa Mukarubega Helene. Mu kubasinyira amasezerano y`ubugure, agira ati: "twabajije uguze uwo ariwe, Nsengumurenmyi Richard avuga ko ariwe uguze, ariko avuga ko aguriye mushiki we Mutambarungu Gardieuse ati mubwira ko ku byangombwa hagomba kugaragaraho uguze n`uwo

bashakanye, avuga ko nta mugore agira, ko yazanye na fiancée we Uwera Sharon kugirango amusinyire”. Ati “ku masezerano y`ubugure twanditseho Mutambarungu Gardieuse ko ariwe uguze”. Yongeyeho ko nyuma y`igihe mu kwezi kwa 8/2012, aribwo haje Niyonsenga Egidia, akavuga ko ari umugore wa Nsengumuremyi Richard, akababaza amakuru y`imitungo Nsengumuremyi yaba yaraguze, bikabatangaza kuko Nsengumuremyi Richard yari yarababwiye ko ari ingaragu nta mugore agira ati: ``uwo mugore yadusabye niba dushobora kumuha inyandiko ijyanye no kuvuga uburyo parcelle UPI 656 yaguzwe, turayimuha.

[70] Umutangabuhamya Ntakontagize Florence akaba n’Umukuru w`Akagari, mu ibazwa rye no mu Bugenzacyaha, ku rupapuro rwa 5-6, ku wa 05/1/2013 ku mitungo ibarizwa mu kagari ka Gatovu, Niyonsenga Egidie arega umugabo we ko yamuhishe akayitirira abandi, yagize ati: Nsengumuremyi Richard yaje muri Nyagatovu ashakisha inzu yo kugura yifashisha komisiyoneri uwitwa Ntampaka Richard, wamurangiye inzu ya Mukarubega Helene iri muri parcelle UPI 656 munsi y`Akagari ka Nyagatovu, inzu yaguzwe 24 millions yishyuwe na Nsengumuremyi Richard, amafaranga ayavanye muri FINA BANK konte ye. Amaze kuyigura, mushiki we Mutambarungu Gardieuse, umuganga ukorera Faisal, yaje kundeba ku Kagari yaka ibyangombwa by`umutungo, namutumye ibyangombwa byo mu Mudugudu n`iby’ugurishije, azana na Nsengumuremyi Richard we ntacyo avuga kuko umutungo yari yawandikishijeho mushiki we, ndamusinyira ntabizi, naje kubimenya aho umugore we atangiye kumurega. Umugore we atanze ikirego, tubikurikiranye tumenya ko ari Nsengumuremyi Richard ariwe waguze iyo nzu akayandikishaho mushiki we, ariko ibikorwa byose byo kuhubaka byakorwaga na Nsengumuremyi Richard, niwe wazaga kubakisha no guhemba abafundi, mushiki we ntiyigeze ahagera. Avuga ko Ntampaka yamubwiye ko hari n`indi nzu Nsengumuremyi Richard yaguze I Kibagabaga, akaba ariho atuye abana n`inshoreke ye.

[71] Ku birebana n`umubare w`amafaranga y`inzu yishyuwe Mukarubega Helena n`uwayamwishyuye, Urukiko rw’Ikirenga rurasanga imvugo za Nsengumuremyi Richard n`iza Mutambarungu Gardieuse zivuguruzanya , kuko nk’uko bigaragajwe haruguru, mu ibazwa ryabo mu Bugenzacyaha, Nsengumuremyi Richard avuga ko Mutambarungu Gardieuse yamuhaye 20,000,000 Frw ngo ayamubikire kuri compte ye, akanavuga ko bucyeye bwaho yayabikuje akayaha Mutambarungu Gardieuse nawe akayishyura Mukarubega Helene, ibi bikaba binyuranye n’ibyavuzwe na Mutambarungu Gardieuse wemeza ko yahaye Nsengumuremyi Richard 22,000,000 Frw ngo ayamubikire kuri compte ye, bwacya akayamusubiza, maze Mutambarungu Gardieuse akaba ariwe wishyura Mukarubega Helene.

[72] Urukiko rusanga uku kwivuguruza kwabo gushimangirwa n’ubuhamya bwa Mukarubega Helene wemeje ko atigeze ahabwa amafaranga na Mutambarungu Gardieuse, ko ari Nsengumuremyi Richard wavanye kuri compte ye 20,000,000 Frw, ayashyira kuri Compte ye bari bamufungurije muri Fina Bank, anagaragaza ko ari 20.000.000 Frw yahawe aho kuba 22,000,000 Frw nk’uko bivugwa na Mutambarungu Gardieuse, ko na nyuma Nsengumuremyi Richard yaje kumwishyura andi angana na 2,000,000 Frw nayo ayashyize kuri compte ye muri Fina Bank, andi asigaye angana na 1,000,000 Frw yemeza ko yayahwe na Mutambarungu Gardieuse mu bice bibiri nk’uko bigagaragazwa n’inyandiko iri muri dosiye, c118 yayamuhereyeho yo ku wa 29/11/2012 igaragaza ko yamuhaye 800,000 Frw, naho ku wa 02/05/2013 akamuha ayari asigaye angana na 200,000 Frw.

[73] Urukiko rusanga na none uko kwivuguruza ku mubare w`amafaranga yishyuwe inzu, kunagaragara hagati y’imvugo za Mutambarungu Gardieuse n’umugabo we Muhirwa Pacifique, kuko Mutambarungu Gardieuse yemeza ko yishyuye Mukarubega Helene 22,000,000 Frw mu gihe baguraga inzu, akamusigaramo 1.000.000 Frw, ibyo bikaba bitandukanye n`ibyavuzwe n’umugabo we Muhirwa Pacifique ubwo yabazwaga mu Bushinjacyaha nk’uko bigaragara kuri cote ya 111, akemeza ko bagura inzu na Mukarubega Helene bamuhaye 20,000,000 Frw, bakamusigaramo 3.000.000 Frw bityo uko kwivuguruza k`umugore n`umugabo ku mubare w`amafranga baguze inzu, akaba ari ikimenyetso cy`uko ataribo baguze iyo nzu ubu bita iyabo.

[74] Urukiko rusanga rero hashingiwe ku ivuguruzanya hagati ya Nsengumuremyi na mushiki we, no kivuguruzanya hagati ya Mutambarungu n`umugabo we ku byerekeye ingano y`amafaranga yishyuwe inzu, ndetse no ku buhamya bwa Mukarubega wagurishije inzu, nk’uko imvugo zavuzwe haruguru zibigaragaza, inzu yaraguzwe na Nsengumuremyi Richard kuko ariwe washakishije inzu iburanwa, akaba

ariwe wayiguze akishyura igiciro cyayo Mukarubega Helene, akanayikoraho ibikorwa by`ubwubatsi. Ibi bikaba binashimangirwa n`ubuhamya bwa Bagabo Stephen wari Umuyobozi w'Umudugudu w' Ijabiro ahabarizwa inzu iburanwa, hanasinyiwe amasezerano y`ubugure hamwe n`ubuhamya bwa Executif w'Akagali ka Gatovu Ntakontagize Florence watanze ibyangombwa by`umutungo, bakaba bose baremeje ko inzu yaguzwe na Nsengumuremyi Richard, akavuga ko we ari ingaragu ndetse akerekana fiancé bazanye (Uwera Sharon), maze akayandikishaho mushiki we Mutambarungu Gardieuse, bigaragaza neza ko atari yabyumvikanyeho n`umugore we Niyonsenga Egidie basezeranye ivangamutungo rusange.

[75] Urukiko rurasanga kandi ikindi kimenyetso cy`uko ari Nsengumuremyi Richard waguze inzu, aho kuba yaraguzwe na Mutambarungu nk'uko bombi bashaka kubyumvikanisha, ari imigendekere y`ubwishyu, aho amafaranga 20,000,000 Frw bavuga ko yishyuwe nyiri inzu ari ayo Mutambarungu yahaye Nsengumuremyi Richard ngo ayashyire kuri compte ye ku wa 03/2/2012, nyuma aza kuyavanaho ayasubize Mutambarungu kugirango azishyure Mukarubega Helene, Urukiko rusanga atari uko byagenze, kuko ayo mafaranga bavuga yashyizwe kuri iyo compte, kimwe n`andi yari asanzweho, Nsengumuremyi Richard yarayavanyeho, ariko ntiyayasubiza Mutambarungu Egidie ngo ayishyure Mukarubega Helena, byumvikana ko aya mafaranga yari aya Nsengumuremyi Richard kuko yahise ayakura kuri compte yose ntihagire asigaraho, ibyo bikaba bivuze ko ayo mafaranaga atari aya Mutambarungu cyane cyane ko mu miburanire ye yose nta kimenyetso atanga cyemeza ko yamuhaye ayo mafaranga yari agenewe ubwishyu bw`inzu iburanwa uretse kubivuga gusa.

[76] Hashingiwe ku mategeko n`ibisobanuro bitanzwe haruguru, Urukiko rusanga rero uwo mutungo ugizwe n'inzu waguzwe na Nsengumuremyi Richard awugurira mushiki we Mutambarungu Gardieuse atabyumvikanyeho n`umugore we, ugomba kugaruzwa mu mutungo Nsengumuremyi Richard yari asangiye na Niyonsenga Egidie, ukagurishwa bakagabana ikiguzi cyawo ku buryo bungana.

ii. Ku birebana n'inzu ifitwe na Uwera Sharon.

[77] Urukiko rusanga mu myanzuro ye kimwe no mu miburanire ye muri uru Rukiko, Nsengumuremyi Richard yiyemerera ko yaguze inzu iburanwa na Munyeragwe Justin iburanwa akayanikishaho Uwera Sharon. Ibi bishimangirwa n`imvugo za Munyeragwe Justin wayimugurishije aho yemeza ko yishyuwe amafaranga na Nsengumuremyi Richard ariko bajya gukora inyandiko y`amasezerano, akamubwira ko ayandika kuri Uwera Sharon nkuko bigaragara mu mu nyandiko-mvugo y`ibazwa rye mu Bugenzacyaha kuri cote za 17-19.

[78] Urukiko rurasanga kandi ibi bivuguruza imvugo za Uwera Sharon uvuga ko ariwe waguze iyo nzu, kuko iyo aza kuba ariwe wayiguze yari kuba ariwe wishyura. Kuba kandi Nsengumuremyi Richard yariyemereye ko yanditse inzu kuri Uwera Sharon bidaturutse ku bwumvikane bw`abashakanye bivuze ko yemera ko yakoze ibikorwa bigize icyaha[2] kuko nk'uko biteganywa n`ingingo ya 110 y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, "amagambo umuburanyi cyangwa umuhagarariye avugira mu Rukiko agira ibyo yemera, atsindisha uwayavuze``. Kubera izo mpamvu, Urukiko rukaba rusanga iyo nzu nayo igomba kugaruzwa mu mutungo wa Nsengumuremyi Richard na Niyonsenga Egidie, ukagurishwa, bakagabana ikiguzi cyawo ku buryo bungana.

3. Ku byerekeye imodaka eshatu ziburanwa Nsengumurenyi Richard na Niyonsenga Egidie bari batunze.

[79] Me Gashema Félicien na Me Bikotwa basaba ko indi mitungo ikwiye kugarurwa na Nsengumuremyi Richard akayigabana na Niyonsenga Egidie igizwe n'imodoka eshatu, (FUSO, RAV4 na LUXUS), imwe ikaba yari ifite plaque RAB 292.S, RAB 271P na RAA 122 W, izo modoka ngo zikaba zarabyazwaga umusaruro na Nsengumuremyi Richard wenyine.

[80] Nsengumuremyi Richard n'umwunganira basobanura ko ibijyanye n'imodoka nta ruhande na rumwe rwigeze ruziregera, ngo uretse ko Ubushinjacyaha bwazibajijeho, bavuga ko mu modoka aregwa

[2] Icyaha cyo gukoresha umutungo w`urugo bidaturutse ku bwumvikane bw`abashakanye

hari imwe ya RAVA 4 ifite plaque RAB 271P yagurishijwe na Niyonsenga Egidie atabimenyesheje umugabo we nk'uko byemejwe mu rubanza nimero RP 0326/15/TB/NYGE, ko basanga rero n'imodoka zindi nta mpamvu yazigarukaho muri uru rubanza.

UKO URUKIKO RUBIBONA

[81] Dosiye y`urubanza igaragaza amasezerano y`ubugure bw`imodoka Luxus RAB 292S, Rava 4 RAB 271P na Fuso RAA 122 W zari mu bigize umutungo Nsengumuremyi Richard yari asangiye na Niyonsenga Egidie.

[82] Ku birebana n'imodoka 2, Luxus ifite plaque RAB 292 S, amasezerano y`ubugure yo ku wa 02/6/2011 agaragaza ko Nsengumuremyi yayiguze n`uwitwa Hodari Adrien ku giciro cya 16,500 Frw, naho imodoka ya Fuso ifite plaque RAA 122 W, amasezerano y'ubugure yo ku wa 26/9/2009 agaragaza ko Nsengumuremyi yayiguze na Harerimana Gaspard ku giciro cya 4,800,000 Frw.

[83] Urukiko rurasanga kandi izi modoka 2 zitaragabanywe mu gihe cy`ubutane. Kuba Nsengumuremyi Richard yireguza ko zitagabanywa kuko ntazigihari nta shingiro byahabwa kubera ko zari zigize umutungo w`urugo, ariko igihe cy'ubutane ntiyazigabana na Niyonsenga Egidia, kuba zitagihari bikaba bitavanaho ko zigize umutungo bari bafatanyije.

[84] Urukiko rurasanga rero uwo mutungo nawo bagomba kuwugabana mu buryo bungana, ariko kuko Nsengumuremyi Richard atazigaragaza cyangwa ngo agaragaze amafaranga yazigurishije, rukaba nta kindi giciro rwaheraho mu kuzibagabanya, uretse gushingira ku mafaranga zaguzwe, nkuko agaragara mu masezerano y`ubugure yagaragajwe haruguru, angana na 16,500,000 Frw yatanzwe kuri Luxus RAB 292 S + 4,800 000 Frw yatanzwe kuri Fuso plaque RAA 122 W, zombi zikaba zari zifite agaciro ka 21,300,000 Frw, bityo Urukiko rukaba rusanga Nsengumuremyi Richard agomba gusubiza Niyonsenga Egidie ½ cy`ayo mafaranga , ni ukuvuga 10,650,000 Frw.

[85] Ku birebana n`imodoka Rava 4 Niyonsenga Egidie ahakana ko atagurishije, Urukiko rusanga nta shingiro bifite kuko hari inyandiko y`ubugure yo ku wa 03/12/2013 igaragaza ko yayigurishije 2,000,000 Frw n`uwitwa Munyaneza Jean Bosco, bityo ayo mafaranga Niyonsenga Egidia akaba yarayatwaye wenyine kandi iyo modoka nayo yari mu bigize umutungo w`urugo, akaba agomba kuyabagana na Nsengumuremyi maze akamuha icya ½ cyayo kingana na 1,000,000 Frw.

4. Ku byerekeye indishyi zitandukanye zisabwa na Niyonsenga Egidie.

[86] Me Gashema Félicien asaba ko Niyonsenga Egidie yahabwa indezo yemeranijweho na Nsengumuremyi Richard mu bushinjacyaha bwa TB Kacyiru zingana na 300.000 Frw x amezi 72= 21.600.000 Frw; indishyi z'akababaro zikomoka mu ku byaza umusaruro imodoka eshatu mu gihe kingana n'imyaka 7 bihwanye na 20.000 Frw/ ku munsi x 30jrsx7ans= 50.400.000 Frw mu gihe kingana n'imyaka 7 hamwe na 20.000 Frw/ku munsi x iminsi 30 x7ans= 50.400.000 Frw, ndetse akanasubizwa amafaranga y'igihembo cya avoka angana na 2.000.000 frw, yose hamwe akaba angana na : 76.000.000 Frw

[87] Nsengumuremyi Richard n'umwunganira bavuga ko imodoka ya Fusso Niyonsenga Egidie asabira indishyi ntayigihari, bityo uwo musaruro bavuga yabyajwe ukaba ntawo. Avuga kandi ko iyo modoka igurwa, yari igikoresho cy'akazi, nyuma karangiye ikaba yarahise igurishwa. Anavuga ko nta gihembo cya Avoka yahabwa kuko ariwe wamushoye mu manza nta mpamvu.

UKO URUKIKO RUBIBONA

[88] Urukiko rurasanga indishyi zikomoka ku musaruro wavuye mu modoka ya Fusso zisabwa na Niyonsenga Egidie atazihabwa kuko nta kimenyetso agaragariza Urukiko cyerekana umusaruro w`amafaranga iyo modoka yinjizaga, kuba ariwe urega akaba atagaragaza ibimenyetso by'ibyo aregera, Urukiko ntaho rwahera rumugenera amafaranga asaba, hashingiwe ku ngingo ya 12 y`Itegeko

N°22/4/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y`imanza z`imbonezamubano, iz`ubucuruzi, iz`umurimo n`iz`ubutegetsi ivuga ko ``urega agomba kugaragaza ibimenyetso by`ibyo aregera, yabibura, uregwa aratsinda, naho ibyerekeranye n'indezo zisabwa na Niyonsenga Egidie avuga ko bazemeranijweho na Nsengumuremyi Richard mu Bushinjacyaha bw'Urukiko rw'Ibanze rwa Kacyiru, Urukiko rurasanga ntacyo rwazivugaho kuko iki kirego kitari mu bubasha bw'uru Rukiko rw'Ikirenga, ahubwo kiri mu bubasha bw'Urukiko rwaburanishije urubanza rw'ubutane.

[89] Urukiko rurasanga kuba Nsengumuremyi Richard yarihariye wenyine umutungo yari asangiye na Niyonsenga Egidie, akwiye kubimuhera indishyi z'akababaro, ariko kuba izo asaba ari nyinshi, mu bushishozi bw'Urukiko, rukaba rumugeneye izingana na 2.000.000 Frw hamwe n'igihembo cya Avoka kingana na 1000.000 Frw.

5. **Ku byerekeye ishingiro ry`ubujuririre bwuririye ku bundi bwatanzwe na Nsengumuremyi Richard.**

[90] Nsengumuremyi Richard n'umwunganira batanze ubujurire bwuririye ku bwa Niyonsenga Egidie basaba indishyi zingana na 5.000.000frws kubera ukuntu Niyonsenga Egidie yamubabaje amuhoza mu manza, aho kumureka ngo akore ibyateza imbere urugo.

[91] Me Gashema Felicien na Me Bikotwa Bruce bavuga ko indishyi Nsengumuremyi Richard asaba atazihabwa kuko basanga nta shingiro ryazo cyane ko kugirango imanza zibeho ariwe waziteye akoresha umutungo w'urugo bidaturutse ku bw'umvikane nuwo bashakanye, akaba atazisaba kandi ariwe ufite amakosa.

UKO URUKIKO RUBIBONA

[92] Urukiko rurasanga indishyi zisabwa na Nsengumuremyi Richard ntazo yahabwa kuko kugirango izi manza zibeho ariwe wabiteye akoresha umutungo yari asangiye na Niyonsenga Egidie batabyumvikanyeho nk'uko byasobanuwe.

III. ICYEMEZO CY'URUKIKO

[93] Rwemeje ko ikirego cyo gusubirishamo urubanza RS/INJUST/RP 00005/2018/SC ku mpamvu z'akarengane cyatanzwe na Niyonsenga Egidie gifite ishingiro;

[94] Rwemeje ko imikirize y'urubanza RPA 0082/14/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 13/05/2014 ihindutse;

[95] Rwemeje ko Nsengumuremyi Richard yataye urugo akanakoresha umutungo w'urugo bidaturutse ku bwumvikane n'uwo bashakanye Niyonsenga Egidie;

[96] Rwemeje ko Uwera Sharon yafatanyije na Nsengumuremyi Richard gukoresha umutungo w'urugo rwe na Niyonsenga Egidie bidaturutse ku bwumvikane bwabo;

[97] Rwemeje ko inzu iri i Kibagabaga Nsengumuremyi Richard yaguze na Munyeragwe Justin, iri mu Mudugudu wa Nyirabwana mu kibanza UPI 1/02/09/1481, yanditse kuri Uwera Sharon, n' inzu Nsengumuremyi Richard yaguze na Mukarubega Helene iri mu kibanza UPI 1/02/09/03/656, yanditse kuri Mutambarungu Gardieuse na Muhirwa Pacifique, iri mu Kagali ka Nyagatovu, Umudugudu w'Ijabano, zigarurwa mu mutungo Nsengumuremyi Richard na Niyonsenga Egidie bari basangiye;

[98] Rutegetse ko inzu iri mu kibanza UPI 1/02/09/1481 yanditse kuri Uwera Sharon hamwe n'inzu iri mu kibanza UPI 1/02/09/03/656 yanditse kuri Mutambarungu Gardieuse na Muhirwa Pacifique zibandukurwaho, zikandikwa kuri Nsengumuremyi Richard na Niyonsenga Egidie, zikagurishwa, bakagabana amafaranga avuyemo, ku buryo bungana;

[99] Rutegetse Nsengumuremyi Richard guha Niyonsenga Egidie 10,650,000 Frw ahwanye na kimwe cya kabiri (1/2) cy`agaciro k`imodoka ebyiri Luxus ifite plaque RAB 292S na FUSO ifite plaque RAA 122 W;

[100] Rutegetse Niyonsenga Egidie guha Nsengumuremyi Richard 1,000,000 Frw ahwanye na kimwe cya kabiri (1/2) cy`agaciro k'imodoka Rava 4 ifite plaque RAB 271P yagurishije;

[101] Rutegetse Nsengumuremyi Richard guha Niyonsenga Egidie amafaranga y'indishyi z'akababaro 2.000.000 n`ay'igihembo cya Avoka 1,000,000 yose hamwe angana na 3,000,000 Frw.