NICYABERA v MUKAGATARE

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC00004/2018/SC (Ntezilwayo, P.; Nyirinkwaya, J; Cyanzayire, Rukundakuvuga, na Hitiyaremye, J.) 21 Mutarama 2020]

Amategeko agenga umuryango – Ababana nk'umugabo n'umugore batarashyingiranywe byemewe n'amategeko – Uburenganzira ku mutungo – Iyo umugabo n'umugore babanye badasezeranye byemewe n'amategeko, imirimo umwe muri bo akora mu rwego rwo kongerera agaciro umutungo w'umuryango, ituma awugiraho uburenganzira.

Amategeko agenga ubutaka – Iyandikishwa ry'ubutaka – Gutesha agaciro icyangombwa cy'ubutaka – Uwakwiyandikishaho ubutaka aterekanye ko yabubonye muri bumwe mu buryo buteganyijwe n'itegeko, aba abikoze mu buryo bunyuranyije n'amategeko, ibyangombwa yahabwa, ubwabyo akaba atari byo bituma abugiraho uburenganzira, kubera ko bishobora guteshwa agaciro hagize ugaragaza ko ubwo butaka ari we nyirabwo.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kibungo Nicyabera arega Mukagatare isambu ya se ngo yigaruriye kandi batarigeze basezerana imbere y'amategeko ndetse nta numwana baribafitanye. Urukiko rwaciye urubanza rwemeza ko isambu Nicyabera aregera, Mukagatare ayifiteho uburenganzira, rwasobanuye ko Mukagatare yari yarasezeranye n'umugabo we Gashabure kubera ko yagaragaje icyangombwa cyatanzwe n'inzego zibifitiye ububasha, ko agomba gusigarana umutungo wose wa Gashabure akubahiriza inshingano yo kurera abana no gufasha ababyeyi ba nyakwigendera niba babikeneye.

Nicyabera amaze kumenya ko habayeho urubanza rwemeje ko Gashabure yashakanye na Mukagatare mu buryo bwemewe n'amategeko, yatanze ikirego mu Rukiko rw'Ibanze rwa Nyamata arutambamira. Rukiko rwaciye urubanza, rwemeza ko ikirego cya Nicyabera nta shingiro gifite, kubera ko atashoboye gutanga ibimenyetso bivuguruza ibyashingiweho, rwemeza ko urubanza yatambamiye rutagomba guhinduka. Nicyabera yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Gasabo avuga ko ibimenyetso yatanze byirengagijwe, Urukiko rw'Isumbuye rwaciye urubanza rwemeza ko ubujurire bwa Nicyabera bufite ishingiro, ko mu guca urubanza, Urukiko rwemeje ko Mukagatare yasezeranye na Gashabure rushingiye ku bimenyetso bitari ukuri, maze rutegeka ko urubanza ruhindutse mu ngingo zarwo zose, runategeka ko ruteshejwe agaciro, rwemeza ko Mukagatare atasezeranye na Gashabure. Nyuma y'icibwa ry'urwo rubanza, Nicyabera Espérance yasubirishijemo ingingo nshya urubanza rwategetse ko isambu ya Gashabure ihabwa Mukagatare, avuga ko Urukiko rwaruciye rushingiye ku kimenyetso cy'uko Mukagatare yasezeranye na Gashabure, none hakaba haraciwe urubanza rwemeje ko ibyo ntabyabaye.

Urukiko rw'Ibanze rwa Kibungo rwaciye urubanza rwemeza ko ikirego cya Nicyabera nta shingiro gifite, kubera ko Mukagatare yiyandikishijeho igice cy'isambu iburanwa Nicyabera ntabitambamire, iyo nyandikomvaho y'iyandikwa ry'ubutaka akaba ntawigeze ayiregera ngo iteshwe agaciro, ko rero urubanza rudahindutse.

Nicyabera yashyikirije ikibazo Urwego rw'Umuvunyi asaba ko urubanza rwaciwe n'Urukiko rw'Ibanze rwa Kibungo rwasubirwamo kuko rugaragaramo akarengane. Nyuma yo kubigenzura no kubisesengura, Urwego rw'Umuvunyi rwasanze urubanza RC 0488/011/TB/KGO rwasabiwe gusubirishamo atari rwo rugaragaramo akarengane, ko ahubwo kagaragara mu rubanza RC 0016/14/TB/KGO rwaciwe ku itariki rwaburanwagamo ikirego cyo gusubirishamo ingingo nshya urubanza RC 0488/011/TB/KGO, maze urwo Rwego rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RC 0016/14/TB/KGO rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga yafashe icyemezo ko urwo rubanza rwoherezwa mu Bwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe.

Nicyabera, avuga ko icyo anenga urubanza asaba ko rusubirwamo ku mpamvu z'akarengane, ari uko rwemeje ko kuba hari igice cy'isambu Mukagatare yiyandikishijeho bimuhesha uburenganzira kuri ubwo butaka. Avuga ko kuba Mukagatare yariyandikishijeho ubutaka ubwabyo bidahagije kugira ngo agire uburenganzira ku isambu iburanwa, kubera ko adashobora kugaragaza aho akomora ubwo butaka. Avuga ko yagombye kwerekana niba atunze ubwo butaka ku bw'umuco, kuba yarabuguze, yarabuhaweho impano, umunani, ingurane, yarabuzunguye cyangwa se yarabubonye mu isaranganya. Arangiza avuga ko Urukiko rw'Ibanze rwa Kibungo rwakoze amakosa rwemeza ko isambu ari iya Mukagatare ngo kuko afite icyangombwa cy'ubukode burambye, nyamara icyo cyangombwa atari ikimenyetso cyemeza nta shiti ko ugifite ari we nyir'ubutaka.

Mukagatare avuga ko ubutaka yibarujeho ari igice cy'isambu yahawe n'ubuyobozi bumaze kuyigabanyamo gatatu, ibindi bice bibiri bigahabwa Nicyabera na musaza we Ruduha. Avuga ko icyo gice yibarujeho nta burenganzira Nicyabera agifiteho kuko afite aho yahawe. Yongeraho ko kuba yaribaruje kuri uwo mutungo ntihagire ubitambamira, bisobanuye ko ari we uwufiteho uburenganzira, ari nayo mpamvu yagiye agurishaho akikenura.

Incamake y'icyemezo: 1. Iyo umugabo n'umugore babanye badasezeranye byemewe n'amategeko, imirimo umwe muri bo akora mu rwego rwo kongerera agaciro umutungo w'umuryango, ituma awugiraho uburenganzira bityo Mugatare yari afite uburenganzira ku mutungo yabanyemo na Gashabuke ariyo mpamvu ajya kugenda yamuhaye uruhare rwe kuri uwo mutungo ariko akaba atakongera kugaruka ashaka kandi uruhare kuri uwo mutungo kuko yaruhawe, isambu iburanwa ikaba igomba kugumana abazungura ba Gashabuke.

2. Uwakwiyandikishaho ubutaka aterekanye ko yabubonye muri bumwe mu buryo buteganyijwe n'itegeko, aba abikoze mu buryo bunyuranyije n'amategeko, ibyangombwa yahabwa, ubwabyo akaba atari byo bituma abugiraho uburenganzira, kubera ko bishobora guteshwa agaciro hagize ugaragaza ko ubwo butaka ari we nyirabwo, bityo icyangombwa Mukagatare yiyandikishijeho isambu iburanwa kikaba kigomba guteshwa agaciro

Gusubirishamo ku mpamvu z'akarengane bifite ishingir;
Imikirize y'urubanza rwasubirishijwemo irahindutse.

Amategeko yashyimgiweho:
Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwand, ingingo ya 10
Itegeko N° 59/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39
Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65

Imanza zifashishijwe:
Urubanza RCAA 0018/13/CS, Harerimana n'abandi v. Sebukayire rwaciwe n'Urukiko rw'Ikirenga ku wa 4/ 10/2014

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nicyabera Espérance yareze mukase Mukagatare Mariane mu Rukiko rw'Ibanze rwa Kibungo asaba gusubizwa isambu ya Se yigaruriye kuko batigeze basezerana imbere y'amategeko akaba nta n'umwana babyaranye.

[2] Ku itariki ya 28/06/2012, urwo Rukiko rwaciye urubanza RC 0488/011/TB/KGO rwemeza ko isambu Nicyabera Espérance aregera Mukagatare Mariane ayifiteho uburenganzira. Mu gufata icyo cyemezo, Urukiko rwasobanuye ko Mukagatare Mariane yari yarasezeranye n'umugabo we GASHABURE Michel kubera ko yagaragaje icyangombwa cyatanzwe n'inzego zibifitiye ububasha, ko rero hashingiwe ku ngingo ya 70, igika cya mbere, iteganya ko iyo umwe mu bashyingiranywe bafitanye amasezerano y'ivangamutungo apfuye, usigaye asigarana umutungo wose akubahiriza inshingano yo kurera abana no gufasha ababyeyi ba nyakwigendera iyo babikeneye (…)[1], Mukagatare Mariane agomba gusigarana umutungo wose wa Gashabure Michel akubahiriza inshingano yo kurera abana no gufasha ababyeyi ba nyakwigendera niba babikeneye.

[3] Nicyabera Espérance amaze kumenya ko habayeho urubanza RC 0015/012/TB/NMTA rwemeje ko GASHABURE Michel yashakanye na Mukagatare Mariane mu buryo bwemewe n'amategeko, yatanze ikirego mu Rukiko rw'Ibanze rwa Nyamata arutambamira. Ku itariki ya 02/07/2013, urwo Rukiko rwaciye urubanza RC 0390/012/TB/NMTA, rwemeza ko ikirego cya Nicyabera Espérance nta shingiro gifite, kubera ko atashoboye gutanga ibimenyetso bivuguruza ibyashingiweho mu rubanza RC 0015/012/TB/NMTA, rwemeza ko urubanza yatambamiye rutagomba guhinduka.

[4] Nicyabera Espérance yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Gasabo avuga ko ibimenyetso yatanze byirengagijwe, ku itariki ya 29/11/2013, urwo Rukiko ruca urubanza RCA 0307/13/TGI/GSBO rwemeza ko ubujurire bwa Nicyabera Espérance bufite ishingiro, ko mu guca urubanza RC 0015/012/TB/NMTA, Urukiko rwemeje ko Mukagatare Mariane yasezeranye na Gashabure Michel rushingiye ku bimenyetso bitari ukuri, maze rutegeka ko urubanza RC 0390/012/TB/NMTA ruhindutse mu ngingo zarwo zose, runategeka ko urubanza RC 0015/012/TB/NMTA ruteshejwe agaciro, rwemeza ko Mukagatare Mariane atasezeranye na Gashabure Michel.

[5] Nyuma y'icibwa ry'urwo rubanza, Nicyabera Espérance yasubirishijemo ingingo nshya urubanza RC 0488/11/TB/KGO rwategetse ko isambu ya Gashabure Michel ihabwa Mukagatare Mariane, avuga ko Urukiko rwaruciye rushingiye ku kimenyetso cy'uko Mukagatare Mariane yasezeranye na Gashabure Michel, none hakaba haraciwe urubanza RCA 0307/13/TGI/GSBO rwemeje ko ibyo ntabyabaye.

[6] Ku itariki ya 27/10/2014, Urukiko rw'Ibanze rwa Kibungo rwaciye urubanza RC 0016/14/TB/KGO rwemeza ko ikirego cya Nicyabera Espérance nta shingiro gifite, kubera ko Mukagatare Mariane yiyandikishijeho igice cy'isambu iburanwa Nicyabera Espérance ntabitambamire, iyo nyandikomvaho y'iyandikwa ry'ubutaka akaba ntawigeze ayiregera ngo iteshwe agaciro, ko rero urubanza RC 0488/011/TB/KGO rudahindutse.

[7] Ku itariki ya 20/01/2015, Nicyabera Espérance yashyikirije ikibazo Urwego rw'Umuvunyi asaba ko urubanza RC 0488/011/TB/KGO rwaciwe n'Urukiko rw'Ibanze rwa Kibungo rwasubirwamo kuko rugaragaramo akarengane.

[8] Nyuma yo kubigenzura no kubisesengura, Urwego rw'Umuvunyi rwasanze urubanza RC 0488/011/TB/KGO atari rwo rugaragaramo akarengane, ko ahubwo kagaragara mu rubanza RC

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[1] Aha Urukiko rwashakaga kuvuga ingingo ya 70 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n' izungura

0016/14/TB/KGO rwaciwe ku itariki ya 27/10/2014 rwaburanwagamo ikirego cyo gusubirishamo ingingo nshya urubanza RC 0488/011/TB/KGO, maze urwo Rwego rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RC 0016/14/TB/KGO rusubirwamo ku mpamvu z'akarengane.

[9] Perezida w'Urukiko rw'Ikirenga, ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, ku itariki ya 12/02/2018, yafashe icyemezo ko urwo rubanza rwoherezwa mu Bwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe, ruhabwa nomero RS/INJUST/RC 00004/2018/SC.

[10] Mu myanzuro ye, Nicyabera Espérance avuga ko kuba Mukagatare Mariane yarahawe ibyemezo by'ubutaka bidahagije kugira ngo agire uburenganzira ku isambu iburanwa, kubera ko atagaragaje aho akomora ubwo butaka kuko atasezeranye na Se imbere y'amategeko. Mukagatare Mariane we ariko avuga ko afite uburenganzira kuri iyo sambu kubera ko bayihawe na Leta bari hamwe n'umugabo we mu mwaka wa 1970.

[11] Urubanza rwaburanishijwe mu ruhame ku itariki ya 11/11/2019, Nicyabera Espérance yunganiwe na Me Munyankindi Monique, Mukagatare Mariane yunganiwe na Me Rwimo Clotilde, ababuranyi babanza kujya impaka ku nzitizi zabyukijwe n'uburanira Mukagatare Mariane.

[12] Inzitizi ya mbere yabyukijwe na Me Rwimo Clotilde, yarebanaga n'iyakirwa ry'ikirego kuko yavugaga ko Nicyabera Espérance nta nyungu n'ububasha afite mu kuburana umutungo wa Gashabure Michel ngo kuko nta kigaragaza ko ariwe wamubyaye. Kuri iyo nzitizi Me Munyankindi Monique uburanira Nicyabera Espérance yavuze ko ari umwana wa Gashabure Michel kubera ko yamwandikishije mu ndangamuntu ye, ndetse no mu nyandiko y'amavuko ya Nicyabera Espérance bigaragara ko ari mwene Gashabure Michel.

[13] Urukiko rwafatiye icyemezo mu ntebe rwemeza ko iyo nzitizi nta shingiro ifite, kubera ko uru Rukiko rwemeje ko mu manza z'akarengane ibibazo birebana n'inyungu ndetse n'ububasha biba bitakirubanwa, uretse mu gihe akarengane kaba ari aho gashingiye.

[14] Inzitizi ya kabiri yatanzwe na Me Rwimo Clotilde, yarebanaga no kuba Urwego rw'Umuvunyi rwaravuze ko akarengane kari mu rubanza RC 0016/14/TB/KGO kandi nyamara atarirwo rwari rwasabwe gusuzuma. Kuri iyo nzitizi Me Munyankindi Monique yavuze ko iyo nta nzitizi irimo, ko kuba Umuvunyi yarashyikirijwe ikibazo cy'akarengane akagasanga mu rundi rubanza rutari urwo yashyikirijwe ibyo atari ikibazo, ko icyangombwa ari uko ikiburanwa ari kimwe muri izo manza zombi.

[15] Iyo nzitizi nayo Urukiko rwayifatiyeho icyemezo mu ntebe rwemeza ko nta shingiro ifite, ko ntacyo bitwaye kuba Urwego rw'Umuvunyi rwashyikirizwa urubanza umuburanyi avuga ko rurimo akarengane ariko rwo rukagasanga mu rundi, ko icyangombwa ari uko izo manza ziba zaraciwe ku kibazo kimwe.

[16] Urukiko rwategetse ko iburanisha rikomeza mu mizi, ariko ruza gusanga ari ngombwa kuzagera aho ikiburanwa kiri mbere yo gupfundikira iburanisha. Ku itariki ya 16/01/2020, Urukiko rwageze aho ikiburanwa kiri mu Mudugudu wa Rugaju, Akagari ka Ntaga, Umurenge wa Mugesera, Akarere ka Ngoma, mu Ntara y'Iburasirazuba, rubaza abaturage barutangariza icyo bazi ku isambu iburanwa n'ababuranyi bahari. Ku itariki ya 05/02/2020, ababuranyi bongeye kwitaba Urukiko bagira icyo bavuga kubyavuye mu iperereza ryakozwe n'Urukiko.

[17] Hakurikijwe imiterere y'uru rubanza, ibibazo byasuzumwe ni ukumenya niba kuba Mukagatare Mariana yarahawe icyemezo cy'ubutaka bihagije kugira ngo agire uburenganzira ku isambu iburanwa nk'uko byemejwe mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, no kumenya niba kuba

Mukagatare Mariana atarasezeranye na nyakwigendera Gashabure Michel bimwambura uburenganzira ku mutungo bari bafitanye nk'uko uruhande rwa Nicyabera Espérance rubiburanisha. Hasuzumwe kandi n'ikibazo cy'indishyi zasabwe muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

a. Kumenya niba kuba Mukagatare Mariane afite icyangombwa cy'ubutaka bihagije kugira ngo agire uburenganzira ku isambu iburanwa.

[18] Nicyabera Espérance na Me Munyankindi Monique umwunganira, bavuga ko icyo banenga urubanza basaba ko rusubirwamo ku mpamvu z'akarengane, ari uko rwemeje ko kuba hari igice cy'isambu Mukagatare Mariane yiyandikishijeho bimuhesha uburenganzira kuri ubwo butaka. Bavuga ko kuba Mukagatare Mariane yariyandikishijeho ubutaka ubwabyo bidahagije kugira ngo agire uburenganzira ku isambu iburanwa, kubera ko adashobora kugaragaza aho akomora ubwo butaka hashingiwe ku biteganywa n'ingingo ya 10 y'Itegeko N° 03/2013/OL ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda. Bavuga ko hashingiwe ku biteganywa n'iyo ngingo, yagombye kwerekana niba atunze ubwo butaka ku bw'umuco, kuba yarabuguze, yarabuhaweho impano, umunani, ingurane, yarabuzunguye cyangwa se yarabubonye mu isaranganya.

[19] Barangiza bavuga ko Urukiko rw'Ibanze rwa Kibungo rwakoze amakosa rwemeza ko isambu ari iya Mukagatare Mariane ngo kuko afite icyangombwa cy'ubukode burambye, nyamara icyo cyangombwa atari ikimenyetso cyemeza nta shiti ko ugifite ari we nyir'ubutaka nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza RCAA 0018/13/CS rwaciwe ku itariki ya 24/12/2014.

[20] Mukagatare Mariane na Me Rwimo Clotilde umwunganira, bavuga ko ubutaka yibarujeho ari igice cy'isambu yahawe n'ubuyobozi bumaze kuyigabanyamo gatatu, ibindi bice bibiri bigahabwa Nicyabera Espérance na musaza we Ruduha Muzerwa. Bavuga ko icyo gice yibarujeho nta burenganzira Nicyabera Espérance agifiteho kuko afite aho yahawe. Bongeraho ko kuba Mukagatare Mariane yaribaruje kuri uwo mutungo ntihagire ubitambamira, bisobanuye ko ari we uwufiteho uburenganzira, ari nayo mpamvu yagiye agurishaho akikenura.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 10 y'Itegeko N° 43/2013 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. Iyo ngingo iteganya kandi ko ubwo butaka ubutunze agomba kuba yarabuhawe n'ubuyobozi bubifitiye ububasha, yarabuguze, yarabuhaweho impano, umurage, izungura, umunani, ingurane cyangwa yarabubonye mu isaranganya.

[22] Ingingo imaze kuvugwa, yumvikanisha ko kugira ngo umuntu ashobore kubona icyemezo cy'iyandikisha ry'ubutaka, agomba kugaragariza urwego rubifitiye ububasha ko yabubonye biciye muri imwe mu nzira ivugwa muri iyo ngingo. Mu yandi magambo, uwakwiyandikishaho ubutaka aterekanye ko yabubonye muri bumwe mu buryo buteganyijwe muri iyo ngingo, yaba abikoze mu buryo bunyuranyije n'amategeko, bityo ibyangombwa yahabwa, ubwabyo akaba atari byo bituma abugiraho uburenganzira, kubera ko bishobora guteshwa agaciro hagize ugaragaza ko ubwo butaka ari we nyirabwo. Ibi ni nabyo byemejwe n'Urukiko rw'Ikirenga mu rubanza RCAA 0018/13/CS[2]. Ni kimwe

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[2] Muri urwo rubanza, Urukiko rwasanze Sebukayire Tharcisse yarahawe icyemezo cy'iyandikisha ry'ubutaka atagaragarije abagitanga aho yakomoye ubwo butaka yita ubwe yahawe na Leta […]; ibi bikaba bigaragaza ko Sebukayire wabonye

n'uwakwiyandikishaho ubutaka hashingiwe ku byangombwa byaje guteshwa agaciro nyuma, uwo nawe yahita atakaza uburenganzira yakeshaga icyemezo cy'ubukode burambye yabonye muri ubwo buryo.

[23] Ku birebana n'uru rubanza, inyandiko zigize dosiye zigaragaza ko Nicyabera Espérance yashyikirije Urukiko rw'Ibanze rwa Kibungo ikirego asaba gusubirishamo ingingo nshya urubanza RC 0488/011/TB/KGO rwari rwaremeje ko isambu iburanwa ari iya Mukagatare Mariane kubera ko yasizwe n'umugabo we Gashabure Michel baseranye byemewe n'amategeko, ikimenyetso gishya yari yatanze akaba ari urubanza rwabaye itegeko rwemeje ko Mukagatare Mariane na Gashabure Michel batigeze basezerana. Urwo Rukiko rwemeje ko ikirego cye nta shingiro gifite ruvuga ko hari igice cy'iyo sambu Mukagatare Mariane yibarujeho, ko kubera iyo mpamvu, urubanza RC 0488/011/TB/KGO Rugumanye agaciro karwo.

[24] Hashingiwe ku mategeko no ku bisobanuro byatanzwe haruguru, Urukiko rurasanga, kuba hari igice cy'isambu Mukagatare Mariane yibarujeho, ubwabyo bitayimuhaho uburenganzira, keretse agaragaje aho akomora ubwo butaka.

b. Kumenya niba kuba Mukagatare Mariane atarasezeranye na Gashabure Michel bimwambura uburenganzira ku mutungo bari bafitanye mbere y'uko batandukana.

[25] Nicyabera Espérance avuga ko Mukagatare Mariane yigaruriye isambu ya Se Gashabure Michel amaze gupfa mu mwaka wa 1994 kandi bari baratandukanye mu mwaka wa 1986, bivuze ko hari hashize imyaka icyenda (9) yose batakibana nk'umugabo n'umugore. Avuga ko yabikoze yitwaje ko bigeze kubana gusa, ariko bakaba batarigeze basezerana imbere y'amategeko, ndetse nta n'umwana bigeze babyarana.

[26] Avuga ko Mukagatare Mariane yatangiye kubana na Se (wa Nicyabera) mu mwaka wa 1973 asimbuye abandi bagore babiri (2) aribo nyina umubyara na nyina wa Ruduha Muzerwa (undi mwana wa Gashabure Michel). Avuga ko nyuma nawe batandukanye aragenda, Se ashaka undi mugore witwa Sezariya, nyuma y'imyaka ibiri (2) Mukagatare Mariane aragaruka ateza amahane ku buryo Sezariya yahise yigendera nawe nta mwana ahabyaye. Avuga ko mu mwaka wa 1981, Mukagatare Mariane yongeye kugenda, Se ashaka undi mugore witwa Nyirabashumba Agnès nawe babana nk'imyaka itatu (3) agenda mu mwaka wa 1984, Se amara igihe kinini aba wenyine, ko ariko hagati aho Mukagatare Mariane yajyaga agaruka ngo arashaka imperekeza, aribwo mu mwaka wa 1986, Se yagurishije igice kimwe cy'isambu amuha imperekeza aragenda, nyuma ashaka undi mugore.

[27] Nicyabera Espérance akomeza avuga ko Mukagatare Mariane yagarutse mu mwaka wa 1995 amaze kumenya ko Gashabure Michel yapfuye ngo aje kugaruza isambu y'umugabo we ayibirukanamo. Avuga ko mu gukemura ikibazo mu buryo bw'agateganyo, abayobozi b'inzego z'ibanze bafashe isambu bayigabanyamo ibice bine (4), igice kimwe gihabwa Nicyabera Espérance, ikindi gihabwa Mukagatare Mariane, icya gatatu gihabwa Ruduha Muzerwa (musaza wa Nicyabera) kuko bavugaga ko abana ba Gashabure Michel batagomba kubura aho baba, icya kane gihabwa nyirasenge, ariko nyuma Mukagatare akaba yaraje kukimwaka. Avuga ko nyuma we hamwe na musaza we baje kugenda kubera ihohoterwa bakorerwaga, Mukagatare Mariane isambu yose akayigarurira. Arangiza asaba gusubirana isambu ya Se Gashabure Michel wapfuye igahabwa abazungura be.

[28] Me Munyankindi Monique wunganira Nicyabera Espérance, avuga ko nyakwigendera Gashabure Michel na Mukagatare Mariane batigeze basezerana imbere y'amategeko, ko kubera iyo mpamvu isambu

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icyemezo cy'iyandikisha ry'ubutaka bitanyuze muri imwe mu nzira ziteganywa n'itegeko yakibonye mu buryo bw'uburyarya.Para. 22. Ingaruka z'ibyo ni uko Urukiko rwatesheje agaciro icyo cyemezo cy'ubutaka. Para.23

iburanwa yavanwa mu maboko ye igahabwa abazungura ba Gashabure Michel bemewe n'amategeko. Avuga ko ariko mu gihe Urukiko rwasanga barabanye nk'umugabo n'umugore, nawe hakaba hari uruhare agomba kugira kuri iyo sambu, yaherezwa ku ruhande yagurishije.

[29] Mukagatare Mariane avuga ko yashakanye na Gashabure Michel mu mwaka wa 1962 babana i Kabuga, nyuma bimukira mu Gisaka mu mwaka wa 1970, ubuyobozi bubakebera isambu batangira kuyihinga. Avuga ko yakomeje kubana n'umugabo we kugeza mu mwaka wa 1993, ubwo yavaga mu rugo arwaye agiye i Rutongo kwivuza, jenoside ikamusangayo, akaba yaragarutse mu rugo rwe mu mwaka wa 1995 agasanga umugabo we yarapfuye.

[30] Me Rwimo Clotilde wunganira Mukagatare Mariane, avuga ko isambu iburanwa uwo yunganira yayishakanye na Gashabure Michel kuko Leta iyibaha bari kumwe. Avuga ko ubwo havukaga amakimbirane kuri iyo sambu hagati ya Mukagatare Mariane n'abana b'umugabo we amaze gupfa, Ubuyobozi bw'inzego z'ibanze bwayigabanyijemo ibice bitatu (3), igice kimwe gihabwa Mukagatare Mariane, ibindi bice bibiri (2) bitwarwa n'abana ba Gashabure Michel, aribo Nicyabera Espérance na Muzerwa Ruduha. Avuga ko ibisabwa na Nicyabera Espérance ko umutungo wose wakurwa mu maboko ya Mukagatare Mariane bitahabwa agaciro, ko ahubwo ibyakozwe n'ubuyobozi bw'inzego z'ibanze bugabanya isambu iburanwa mo ibice bitatu (3) aribyo byagumana agaciro kuko na Mukagatare Mariane afite uburenganzira ku mutungo wasizwe n'umugabo we.

[31] Ubwo Urukiko rwageraga aho ikiburanwa kiri mu rwego rwo kumenya igihe Gashabure Michel na Mukagatare Mariane batangiye kubana, igihe batandukaniye n'uburyo batandukanyemo, rwabajije abatangabuhamya barutangariza ibi bikurikira :

- Hitiyise Straton wavutse mu mwaka wa 1953, yabajijwe igihe Mukagatare Mariane n'umugabo we Gashabure Michel batangiye kubana n'igihe batandukaniye, avuga ko bageze mu Gisaka mu myaka ya za 70 batema ishyamba batangira guhinga, bigeze mu mwaka wa 1977 Leta irabakatira. Avuga ko babanye kugeza mu mwaka wa 1993 ubwo umugore yajyaga kwivuza, ko mbere y'aho atigeze ava mu rugo. Abajijwe niba hagati aho nta bandi bagore Gashabure Michel yigeze ashaka, avuga ko bahari, ko ariko bari abitambukiraga gusa, ko batigeze babana nk'umugabo n'umugore.
- Twahirwa Jean Bosco wavutse mu mwaka wa 1961, yavuze ko Gashabure Michel abona isambu iburanwa yari wenyine, arayitunganya, arubaka, nyuma nko mu mwaka wa 1973 azana Mukagatare Mariane. Yasobanuye ko babanye muri iyo sambu hagera igihe barananiranwa, Mukagatare Mariane arahukana ajya iwabo. Ubwo Gashabure Michel yagiye ashaka abandi bagore bagera kuri batatu (3), Mukagatare Mariane yabimenya akagaruka agatera amahane bakagenda. Avuga ko mu mwaka wa 1986, Mukagatare Mariane yananiranwe burundu na Gashabure Michel, uyu agurisha isambu amuha imperekeza aragenda, ashaka undi mugore, ariko nawe baje kunaniranwa ku buryo yapfuye nta mugore n'umwe afite.
- Nyirabashumba Agnès wavutse mu mwaka wa 1961, uyu akaba ari n'umwe mu bagore bigeze kubana na Gashabure Michel, yabwiye Urukiko ko bashakanye mu mwaka wa 1983 asimbuye uwitwa Sezariya, nawe agasimburwa na Ntamazimwe mu mwaka wa 1985. Yabwiye Urukiko ko icyo gihe cyose Mukagatare Mariane ntawari uhari kuko batigeze baharikanwa. Yasobanuriye Urukiko ko Mukagatare Mariane yari yaragiye, nyuma ashatse kugaruka aburana n'umugabo, uyu agurisha isambu amuha imperekeza aragenda.
- Mukamfizi Siperansiya wavutse mu mwaka wa 1954, yabwiye Urukiko ko Gashabure Michel agera mu Gisaka yari wenyine, ko yamubwiye ko yari afite abagore babiri (2) babyaranye abana babiri (2) ariko bakaba baramunaniye, ariyo mpamvu yashatse Mukagatare Mariane. Yavuze ko ubwo babanye akajya arwara umugabo akumuvuza, ko nyuma yaje kwahukana agarutse umugabo

aramwanga. Yavuze ko Mukagatare Mariane yatanze ikirego mu buyobozi, bubwira Gashabure Michel ko atakwirukana umugore gutyo gusa, bituma agurisha isambu amuha imperekeza aragenda. Yarangije ubuhamya bwe avuga ko Jenoside yabaye baratandukanye kera, Gashabure Michel aba mu nzu wenyine.

- Mujyambere Jean Chrysostome wavutse mu mwaka wa 1973, yabwiye Urukiko ko Mukagatare Mariane yavuye mu rugo rwe arwaye agenda agiye kwivuza mu mwaka wa 1992, jenoside imusangayo. Yavuze ko hagati aho ariko Mukagatare Mariane yagendaga yahukana Gashabure Michel agashaka abandi bagore kuko yari umuntu udashobora kubaho atari kumwe n'umugore, Mukagatare Mariane yamenya ko umugabo we yashohoje, agahita agaruka, ubwo umugore akagenda. Yavuze ko nyuma y'ibyo byose ariko Gashabure Michel yapfuye nta mugore n'umwe bari kumwe.
- Muzerwa Alexis avuga ko yari Konseye mu mwaka wa 1992 ngo akaba yarahaye Mukagatare Mariane icyangombwa agiye kwivuza ari kumwe na Gashabure Michel, ko ibijyanye n'imperekeza yahawe Mukagatare Mariane ntabyo azi.
- Mukangabitsinze Emeriyana wavutse mu mwaka wa 1962, akaba ariwe utunze isambu Gashabure Michel yagurishije, yabwiye Urukiko ko bagura Mukagatare Mariane na Gashabure Michel bari kumwe, ko ibyo bavuga ko Mukagatare Mariane mu mwaka wa 1986 yari yaragiye ataribyo kuko kugeza mu mwaka wa 1993 bari bakiri kumwe.
- Habimana Jean Baptiste wavutse mu mwaka wa 1953, yavuze ko Gashabure Michel na Mukagatare Mariane babanye kugeza nko muri za 90, ko Mukagatare yarwaye Gashabure akamuvuza, nyuma akaza kumwirukana. Yakomeje avuga ko Mukagatare yaje kugaruka Gashabure yanga kubana nawe, ahubwo amushakira imperekeza aragenda.
- Ntambineza Jean Baptiste wavutse mu mwaka wa 1968, yabwiye Urukiko ko iby'imperekeza bavuga ntabyabayeho, ko Mukagatare Mariane yavuye mu rugo mu mwaka wa 1993 agiye kwivuza Jenoside imusangayo. Yavuze ko ibyo bavuga ko Gashabure Michel yashatse abandi bagore, ari uko Mukagatare Mariane yari yarahukanye, ko ariko nyuma agarutse atongeye kugenda kugeza agiye kwivuza.

UKO URUKIKO RUBIBONA

[32] Impande zombi zemeranya ko Mukagatare Mariane na nyakwigendera Gashabure Michel babanye nk'umugabo n'umugore, ibyo kuba barasezeranye imbere y'amategeko byo hari urubanza no RCA 0307/13/TGI/GSBO rwabaye itegeko rwemeje ko ntabyabayeho. Icyo ababuranyi batemeranywaho akaba ari igihe batandukaniye n'ingaruka bifite ku birebana n'umutungo bari bafitanye.

[33] N'ubwo mu mwaka wa 2008 aribwo mu Rwanda hashyizweho Itegeko N° 59/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina rigateganya uko bigenda ku mutungo w'ababanaga nk'umugabo n'umugore batarasezeranye iyo batandukanye[3], Mukagatare Mariane na nyakwigendera Gashabure Michel babana hari hasanzweho ihame ry'uko abantu bose bareshya imbere

[3] Ingingo ya 39, igika cya mbere n'icya kabiri, y'iryo tegeko, iteganya ko ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikije ihame ry'ubushyingiranywe bw'umugabo umwe n'umugore umwe, ko mu gihe umwe mu barebwa n'ibimaze kuvugwa, yabanaga n'abagore cyangwa n'abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa (Ahangaha, mu rubanza n° RS/Inconst/Pén.0003/10/CS, Gatera Johnson, Kabalisa Teddy vs-, Urukiko rw'Ikirenga rwemeje ari ku mpamvu yose yatuma batandukana atari ngombwa ko umwe yaba agamije gushaka).

y'amategeko. Iryo hame ryari mu Itegeko Nshinga ryo ku itariki ya 20 ukuboza 1978[4]. Ku itariki ya 02/03/1981 kandi, u Rwanda rwari rwarasinye Amasezerano mpuzamahanga agamije kurandura ivangura iryo ari ryo ryose rikorerwa abagore (*Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes*). Ibihugu byasinye kuri aya masezerano bikaba byariyemeje gufata ingamba zose za ngombwa kugira ngo bihindure cyangwa bikureho amategeko ayo ariyo yose, ibyemezo by'ubutegetsi, umuco cyangwa indi migirire igize ivangura rikorerwa abagore[5].

[34] Mu gukemura iki kibazo kiri hagati ya Nicyabera Espérance uvuga ko nta burenganzira Mukagatare Mariane afite ku isambu yasizwe na Se (wa Nicyabera) ngo kuko batari barasezeranye, Urukiko rukaba rugomba kwifashisha umuco n'imigenzo byariho icyo gihe mu gihe itanyuranye n'ihame ry'uburinganire hagati y'umugabo n'umugore ryari mu Itegeko nshinga ryavuzwe haruguru[6].

[35] Umuco wariho icyo gihe wateganyaga uburyo bwo kuzirikana uruhare umugore yabaga yaragize ku mutungo w'umuryango, ariyo mpamvu iyo umugore yabaga atagishoboye gukomeza kubana n'umugabo we bagatandukana yagiraga icyo ahabwa. Ibyo bigakorwa hazirikanwa ko mu gihe umugore yabaga mu rugo, hari imirimo yakoraga yazamuraga agaciro k'umutungo w'umuryango.

[36] Ku birebana n'agaciro gahabwa umurimo w'umwe mu bashakanye mu rwego rwo kongerera agaciro umutungo w'umuryango, Urukiko Rusesa imanza rwo mu Bufaransa narwo rwemeje ko umwe mu bashyingiranywe ureka akazi yakoraga kugira ngo ashobore kwita ku rugo no ku burere bw'abana, nawe aba afite uruhare mu kuzamura ubukungu bw'urugo[7]. Ibi bihuje n'ibyateganywaga n'umuco mu Rwanda, ko imirimo umugore yakoraga mu rwego rwo kongerera agaciro umutungo w'umuryango, yatumaga awugiraho uburenganzira. Kubera iyo mpamvu, iyo umugabo n'umugore babaga batagishoboye kubana bagatandukana, umugore yagombaga kugira icyo agenerwa nk'uruhare yagize mu gutuma umutungo w'umuryango wiyongera.

[37] Ku birebana n'uru rubanza, ikibazo cya mbere cyibazwa, ni ukumenya igihe Mukagatare Mariane na Gashabure Michel batandukaniye n'uburyo batandukanyemo. Kuri icyo kibazo, ubwo Urukiko rwageraga aho ikiburanwa kiri rukabaza abatangabuhamya igihe Mukagatare Mariane na Gashabure Michel batandukaniye n'uburyo batandukanyemo, nk'uko byagarajwe haruguru, hari abavuga ko Mukagatare Mariane atigeze atandukana n'umugabo we Gashabure Michel, ko ahubwo yavuye mu rugo rwe agiye kwivuza mu mwaka wa 1993 jenoside ikamusanga aho yari yaragiye kwivuza, yagaruka mu rugo rwe mu mwaka wa 1995 agasanga umugabo we yarapfuye. Ku rundi ruhande ariko, hakaba abandi bavuga ko Mukagatare Mariane yari yaratandukanye n'umugabo we kera, ko ndetse yanahawe imperekeza ajya kugenda.

[38] Urukiko rurasanga mu batangabuhamya bavuga ko Mukagatare Mariane na Gashabure Michel bari bakibana ubwo uyu yapfaga, harimo abahinga imirima bahawe na Mukagatare Mariane. Aha twavuga nka

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[4] Article 16 stipule: «Tous les citoyens sont égaux devant la loi, sans discrimination aucune, notamment de race, de couleur, d'origine, d'ethnie, de clan, de sexe, d'opinion, de religion ou de position sociale

[5]Les Etats parties […] s'engagent à prendre toutes les mesures appropriées, y compris des dispositions législatives, pour modifier ou abroger toute loi, disposition réglementaire, coutume ou pratique qui constitue une discrimination à l'égard des femmes.

[6]Article 93, al. 2, stipule: «Les coutumes ne demeurent applicables que pour autant qu'elles n'aient pas été remplacées par une loi et qu'elles n'aient rien de contraire à la Constitution, aux lois, aux règlements, à l'ordre public ou aux bonnes mœurs ».

[7] […] La Cour de Cassation a même admis que l'activité d'un époux « dans la gestion d'un ménage et la direction du foyer » pouvait, suivant son importance, avoir excédé sa contribution aux charges du mariage et avoir été pour son conjoint une source d'économies. Il en était spécialement ainsi si l'épouse, pour se consacrer exclusivement aux soins du ménage et des enfants, avait renoncé à sa propre activité professionnelle et, par là-même, à toute source de revenus …François Terré et Philippe Silmer, Droit civil, Les régimes matrimoniaux, 4ème édition Dalloz 2005, p. 661.

Hitiyise Straton utunze umugore uhinga muri iyo sambu, ibi nawe akaba atarabihakanye ubwo abaturage bakemangaga imvugo ze, ubuhamya bwabo rero bukaba butakwizerwa.

[39] Mu batangabuhamya bavuga ko Mukagatare Mariane na Gashabure Michel bari baratandukanye kera, ko ndetse mbere y'uko Mukagatare Mariane agenda yahawe imperekeza, harimo umukecuru Mukamfizi Siperansiya wavuze ko yari aturanye n'uwo muryango, na Nyirabashumba Agnès, umwe mu bagore babanye na Gashabure Michel, Mukagatare Mariane amaze kugenda. Ibyagaragariye Urukiko, ni uko aba bavuga ibyo bazi kandi nta kubogama guhari kuko nta nyungu zagaragajwe ko bafite muri iki kibazo.

[40] Hashingiwe ku ngingo ya 65 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko Urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa, ko rutitsitsa ku mubare w'abatangabuhamya ahubwo rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira, rukanashingira ku byo rwiboneye ubwo rwari aho ikiburanwa kiri, mu bushishozi bwarwo, Urukiko rurasanga ubwo Gashabure Michel yapfaga yari yaratandukanye na Mukagatare Mariane kandi mbere yo kugenda akaba yarabonye imperekeza.

[41] Hashingiwe ku bisobanuro byose byatanzwe haruguru, kuba Mukagatare Mariane yarabanye na Gashabure Michel nk'umugabo n'umugore bagafatanya gutunganya isambu bari bafitanye mu rwego rwo kuyongerera agaciro, Urukiko rurasanga ibikorwa byose yayikozeho biyimuheshaho uburenganzira, ari nayo mpamvu ajya kugenda Gashabure Michel yagurishije igice cy'iyo sambu akamuha imperekeza.

[42] Urukiko rurasanga uruhare rwa Mukagatare Mariane ruhwanye n'iyo mperekeza kuko atigeze aregera ko imperekeza yahawe idahwanye n'uruhare rwe, bityo isambu yasizwe na Gashabure Michel ubwo yapfaga, ikaba igomba kuba iy'abazungura be.

[43] Mu gusoza, hashingiwe ku bisobanuro no ku mategeko byatanzwe haruguru, Urukiko rurasanga kuba hari igice cy'isambu iburanwa Mukagatare Mariane yiyandikishijeho ubwabyo ataribyo biyimuheshabo uburenganzira, ubwo yari ayifiteho bukaba buhwanye n'imperekeza yahawe ubwo yatandukanaga n'umugabo we nk'uko byasobanuwe, bityo ikirego cyatanzwe na Nicyabera Espérance asaba gusubirishamo ku mpamvu z'akarengane urubanza RC 0016/14/TB/KGO rwaciwe n'Urukiko rw'Ibanze rwa Kibungo ku itariki ya 27/10/2014, kikaba gifite ishingiro.

c. Ibijyanye n'indishyi zisabwa muri uru rubanza

[44] Nicyabera Espérance asaba Urukiko kumugenera amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana na miliyoni imwe (1.000.000 Frw), indishyi z'akababaro nazo zingana na miliyoni imwe (1.000.000 Frw) kubera ko yakorewe akarengane akavutswa uburenganzira ku mutungo wa Se mu gihe cy'imyaka makumyabiri n'ibiri (22).

[45] Mukagatare Mariane avuga ko indishyi Nicyabera Espérance asaba nta shingiro zahabwa kubera ko ariwe wahisemo kumushora mu manza zitari ngombwa, ko ahubwo ariwe ukwiye kumuha indishyi z'akababaro zingana na miliyoni ebyiri (2.000.000 Frw).

UKO URUKIKO RUBIBONA

[46] Urukiko rurasanga indishyi z'akababaro Nicyabera Espérance asaba zifite ishingiro kubera ko yavukijwe uburenganzira ku mutungo yasigiwe na Se, ariko miliyoni imwe (1.000.000 Frw) asaba akaba

atayihabwa kuko atashoboye gusobanura uburyo yayibaze, bityo mu bushishozi bw'Urukiko akaba agenewe ibihumbi magana atanu (500.000 Frw). Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, Urukiko rurasanga nayo afite ishingiro kubera ko bigaragara ko yashatse Avoka umuburanira, ariko kubera ko ayo asaba ari menshi kandi nayo akaba atabasha kuyatangira ibisobanuro, mu bushishozi bwarwo, Urukiko rumugeneye ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka n'ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza.

[47] Ku birebana n'indishyi zisabwa na Mukagatare Mariane, Urukiko rurasanga ntazo agomba guhabwa kubera ko ntacyo atsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[48] Rwemeje ko ikirego cyatanzwe na Nicyabera Espérance gisaba gusubirishamo ku mpamvu z'akarengane urubanza RC 0016/14/TB/KGO rwaciwe n'Urukiko rw'Ibanze rwa Kibungo ku itariki ya 27/10/2014 gifite ishingiro;

[49] Rwemeje ko isambu iburanwa iri mu Mudugudu wa Rugaju, Akagari ka Ntaga, Umurenge wa Mugesera mu Ntara y'Iburasirazuba ari iy'abazungura ba Gashabure Michel;

[50] Rwemeje ko amasezerano y'ubukode burambye afite N° UPI:5/06/06/03/3860 yahawe Mukagatare Mariane ateshejwe agaciro;

[51] Rutegetse Mukagatare Mariane guha Nicyabera Espérance indishyi z'akababaro zihwanye n'ibihumbi magana atanu (500.000 Frw) n'amafaranga ibihumbi magana inani (800.000 Frw) akubiyemo igihembo cya Avoka n'ay'ikurikiranarubanza.