GAHIRE v MUKARUSHAKO NA BAGENZI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00008/2019/SC – (Cyanzayire, P.J., Nyirinkwaya, Hitiyaremye, Muhumuza na Karimunda, J.) 21 Ugushyingo 2021]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Gusaba kurenganurwa ku bitaragaragarijwe umucamanza mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane – Mu gusobanura aho akarengane kabo gashingiye, ababuranyi berekana ibimenyetso cyangwa amategeko byagaragarijwe urukiko mu rubanza basaba ko rusubirishwamo rukabyirengagiza kandi byari kubagirira akamaro – Ibyo umuburanyi atagaragarije umucamanza ngo amusabe kubisuzuma, ntashobora kuvuga ko yabimurenganyijeho.

Amategeko agenga ubutaka – Uburyo bwo kubona ubutaka no kubwiyandikishaho – Ubudahungabanywa bw'uburenganzira bwanditse mu cyangombwa cy'ubutaka – Uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze – Ibyangombwa by'ubutaka bishobora guteshwa agaciro – Uwatunze ubutaka bw'abandi nta buryarya arabusubiza ariko akishyurwa agaciro k'ibyo yabushyizeho.

Amategeko agenga umuryango – Umutungo uzungurwa – Amasezerano y'ubugure yakozwe n'umwe mu bazungura – Igurisha ry'umutungo uhuriweho ryakozwe n'umwe mu bawusangiye, rigira agaciro ku bireba gusa igipande kigize umugabane we – Ikirego kigamije gukurikirana uwo mutungo uhuriweho n'abazungura wagurishijwe n'umwe muri bo, kubera kutemera ibyakozwe bitabanje kwemeranywaho, ni ikirego kigamije kuwubungabunga gishobora gutangwa n'umwe mu bawuhuriyeho.

Incamake y'ikibazo: Abazungura ba Bagenzi Jean aribo Mukarushakiro, Bagenzi na Mukangenzi bareze Gahire biturutse ku masezerano y'ubugure bw'inzu y'ubucuruzi, yabaye hagati ya Bagenzi na Gahire, bakavuga ko Bagenzi yayigurishije abandi bazungura batabyemeye kandi atarageza no ku myaka y'ubukure. Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, ruburanishwa ku rwego rwa nyuma n'Urukiko rw'Ikirenga, Gahire aratsindwa bituma yiyambaza Urwego rw'Umuvunyi asaba ko rwasubirwamo ku mpamvu z'akarengane, ubusabe bwe burakirwa. Higiro waguze umutungo uburanwa harangizwa urubanza rwasabiwegusubirwamo, yagobotse mu rubanza.

Mu bibazo byasuzumwe n'Urukiko harimo ikijyanye n'iyubahirizwa ry'ibihe byo kujurira mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane; ikijyanye no kumenya niba Bagenzi yari yujuje imyaka y'ubukure igihe yasinyaga amasezerano y'ubugure; ikijyanye no kumenya niba abareze barashoboraga gutanga ikirego hakurikijwe ibyo amategeko ateganya n'ikijyanye no kumenya niba umutungo wagurishijwe wari uwa Bagenzi Jean n'ingaruka zabyo.

Ku kibazo cya mbere, Urega avuga ko Urukiko rwabanza gusuzuma ikibazo cy'iyubahirizwa ry'ibihe byo kujurira, kuko nta cyemezo cyabifashweho mu rubanza rusabirwa gusubirwamo. Akomeza avuga ko ingingo ijyanye no gutinda kujurira ari ishingiro ry'akarengane, ko yabivuze mu rubanza rusubirishwamo ariko ntibyandikwe muri kopi y'urubanza. Yongeraho ko impamvu bitagiweho impaka mu nama ntegurarubanza ari uko abaregwa nabo ubwabo nta kimenyetso cy'igihe bajuririye bari bafite, ariko ko ibijyanye n'ibihe byo kujurira ari ndemyagihugu, bikaba bigomba gusuzumwa igihe cyose bibonekeye. Abaregwa bavuga ko ibijyanye n'iyubahirizwa ry'ibihe byo kujurira bitigeze bivugwaho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, ko rero umuburanyi atavuga ko yagize akarengane ku kibazo atigeze agaragariza umucamanza ngo amusabe kugisuzuma.

Ku kibazo cya kabiri, Bagenziyari atarageza ku myaka y'ubukure igihe yasinyaga amasezerano. Naho ku kibazo cya gatatu Urega avuga ko mu rubanza rusabirwa gusubirwamo, Urukiko rutagombaga kwakira ikirego cya Bagenzi na Mukarushakiro kuko batinze kuregera amasezerano bivuze ko yarengeje igihe cy'imyaka 10 yateganywaga n'amategeko kugirango, kuva aho yujurije imyaka y'ubukure, aregere ko amasezerano yasinye ari umwana ateshwa agaciro, bityo ikirego cye kikaba kitaragombaga kwakirwa. Abaregwa bavuga ko ibyavugwaga mu ngingo ya 196 y'Itegeko ryo ku wa 30/07/1888 byavanyweho n'ibivugwa mu ngingo ya 159 y'Itegeko N^{o} 45/2011 ryo ku wa 25/11/2011, ibyo bashaka kuyivugisha bikaba ataribyo ivuga kuko nta *lésion* yabayeho. Bavuga kandi ko iyo *exception* inabayeho itareba

Mukarushakiro, kuko amasezerano atayazi ndetse atanayashyizeho umukono. Bityo, kuva aho yujurije imyaka y'ubukure, yari afite igihe cy'imyaka 30 cyo kuregera kugaruza umutungo afiteho uruhare nk'umuzungura wa Bagenzi Jean, akaba yaracyubahirije.

Ku kibazo cya kane, umutungo wagurishijwe wari uwa Bagenzi Jean ariko Gahire ntiyigeze amenya ko ari uwe kuko ntacyagaragazaga ko wigeze umwandikwaho. Akaba ari no muri urwo rwego mu masezerano y'ubukode yo ku wa 01/08/1995, banditse ko akodesheje inzu Bagenzi yasigiwe na Se. Ayo masezerano y'ubukode yabaye ataragura, agiye kugura ahabwa icyemezo cy'ubuyobozi kigaragaza ko umutungo ari uwa Bagenzi, uburyo wamugezeho bikaba ari ibireba umuryango. Abaregwa bavuga ko nta karengane karimo kuko Gahire akora icyitwa amasezerano y'ubugure, yari azi neza ko iyo nzu ari iy'umubyeyi wabo, akaba atagaragaza uko yubatswe na Bagenzi, anayibohoza abaturanyi bakaba baravugaga ko ari iya Bagenzi Jean, ari nayo mpamvu yayikodeshaga mu izina rye nk'uko bigaragara mu masezerano yo ku wa 01/08/1995. Bityo nyuma y'urupfu rwa se, uwo mutungo baburana ukaba warasigaye uhuriweho n'abazungura be ariko Bagenzi awugurisha adafiteho uruhare wenyine, ingaruka zabyo zikaba ko amasezerano y'ubugure yakoze afite agaciro ku bireba gusa umugabane we.

Bisobanuye ko umutungo Bagenzi yagurishije Gahire wari uw'abazungura ba Bagenzi Jean, amasezerano y'ubugure afite agaciro ku bireba gusa umugabane we uhwanye na 1/3 cy'umutungo uburanwa, icyo 1/3 kikaba kigomba guhabwa Gahire; naho 2/3 bikaba bigomba gusubizwa abandi bazungura ba Bagenzi Jean, bikagumanwa na Higirowaguze umutungo harangizwa urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane.

Incamake y'icyemezo: 1. Mu gusobanura aho akarengane kabo gashingiye, ababuranyi berekana ibimenyetso cyangwa amategeko byagaragarijwe urukiko mu rubanza basaba ko rusubirishwamo rukabyirengagiza kandi byari kubagirira akamaro. Ibyo umuburanyi atagaragarije umucamanza ngo amusabe kubisuzuma, ntashobora kuvuga ko yabimurenganyijeho.

2. Uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze – Ibyangombwa by'ubutaka bishobora guteshwa agaciro – Uwatunze ubutaka bw'abandi nta buryarya arabusubiza ariko akishyurwa agaciro k'ibyo yabushyizeho.

3. Igurisha ry'umutungo uhuriweho ryakozwe n'umwe mu bawusangiye, rigira agaciro ku bireba gusa igipande kigize umugabane we. Ikirego kigamije gukurikirana uwo mutungo uhuriweho n'abazungura wagurishijwe n'umwe muri bo, kubera kutemera ibyakozwe bitabanje kwemeranywaho, ni ikirego kigamije kuwubungabunga gishobora gutangwa n'umwe mu bawuhuriyeho.

Ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko rw'Ikirenga, gifite ishingiro kuri bimwe.

Amategeko yashingiweho:

Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55.

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9, 75 n'iya 154.

Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 2, 61, 74 n'iya 105.

Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo 54.

Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 159.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 11, 13 n'iya 110.

Itegeko Nº 42/1988 ryo ku wa 27/10/1988 ryerekeye interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, ingingo ya 86, 349, 352, 353, 360, 431 n'iya 647.

Itegeko ryo ku wa 19/02/1964 ryerekeye ibarura, ikarita iranga umuntu, no guhindura aho uba, ingingo ya 1, iya 3 n'iya 4.

Itegeko ryo ku wa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 196.

Iteka rya Minisitiri N° 01/11/1990 ryo ku wa 30/11/1990 ryerekeye impapuro nyemeza z'ubutaka zibikwa na Komini, ingingo ya 1, 6 n'iya 10.
Iteka ryo ku wa 20/07/1920 rishyiraho igitabo cya kabiri cy'amategeko, ingingo ya 50.

Imanza zifashishijwe:
Road Solutions Pavement Products na Mailco Ltd, RS/INJUST/RCOM 00002/2020/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020.
PRIME Insurance Ltd na Kansiime James, RS/INJUST/RCOM 00005/2018/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/06/2020.
Ngizweninshuti Albert na Muhima Giovanni, RS/INJUST/RC 00024/2018/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020.
Umutoni Marie Bonne Concilie na Gakuba Rubojo Egide na Nyirinkindi Louis Marie, RCAA 0075/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 15/02/2013.
Harerimana Gaspard na Sebukayire Tharcisse, RCAA 0018/13/CS, rwaciwe n'Urukiko rw'Ikirenga kuwa
Nyirabizimana Zilipa na Musoni Ndamage Thaddée, RCAA 0015/09/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 29/04/2011.

Inyandiko z'abahanga zifashishijwe:
Jaques Delisle, Les Cahiers de droit, vol.2, 1956, p.91.
Laëtitia Stasi, Droit civil, Personnes, Incapacités, Famille, édition Paradigme, 2007-2008, p.82.
Sebastien De La Touane et Camille Le Douaron, Repertoire de droit civil, Tome V, Dalloz, 2009, p.45, n° 357.
Code Civil, 115 ème édition, Dalloz, 2016, p.706-707.
Guy Venandet, Pascal Ancel, Xavier Henry, Alice Tisserand-Martin, Georges Wiederkehr, Pascal Guiomard, Code Civil, 115 ème édition, Dalloz, 2016, p. 1104.
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François Terre, Yves Lequette, na Sophie gaudemet, Droit Civil, Les successions et les libéralités, 4 ème édition, Dalloz, 2014, p. 754.
Philippe Malaurie, Droit Civil, Les successions et les libéralités, 2 ème édition, Defrenois, 2006, p. 388.
Cour de Cassation, civile, Chambre civile 3, 24 octobre 2019, 18-20.068, Bicc n° 918 du 15 mars 2020 et Legifrance.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Bagenzi Théogène yagurishije Gahire Athanase inzu y'ubucuruzi iherereye ku Giporoso mu Karere ka Kicukiro, mu byiciro bibiri. Amasezerano y'icyiciro cya mbere yakozwe ku wa 06/11/1996, ay'icyiciro cya kabiri akorwa ku wa 04/11/1997. Gahire Athanase amaze kugura uwo mutungo yawiyandikishijeho, uhabwa UPI: 1/03/05/02/402.

[2] Nyuma abazungura ba Bagenzi Jean, aribo Bagenzi Théogène, Mukarushakiro Gloriose na Mukangenzi Céline, bahagarariwe na Mukarushakiro Gloriose, bareze Gahire Athanase ko yabahuguje inzu basigiwe n'umubyeyi wabo avuga ko yayigurishijwe na Bagenzi Théogène nyamara uyu yari umwana muto. Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge.

[3] Ku wa 20/03/2013, urwo Rukiko rwaciye urubanza RC 0774/11/TGI/NYGE, rwemeza ko amasezerano y'ubugure yakozwe hagati ya Gahire Athanase na Bagenzi Théogène ku wa 06/11/1996 n'ayo ku wa 04/11/1997 ateshejwe agaciro, rutegeka ko abazungura ba Bagenzi Jean bishyura Gahire Athanase 191.713.088 Frw y'ibyo yashyize ku mutungo, kandi bakayamuha mbere y'uko abasubiza inzu. Urukiko rwasobanuye ko Bagenzi Théogène yagurishije inzu na Gahire Athanase ataruzuza imyaka

y'ubukure hashingiwe ku cyemezo cy'amavuko kigaragaza ko yavutse ku wa 01/01/1976. Urukiko rwasobanuye ariko ko Gahire Athanase yaguze nta buryarya, kuko amasezerano yo ku wa 04/11/1997 yakozwe Bagenzi Théogène amaze kuzuza imyaka y'ubukure, na nyina wa Mukarushakiro Gloriose akaba yarayasinyeho.

[4] Gahire Athanase ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rwatesheje agaciro amasezerano y'ubugure kandi ataricyo cyari cyaregewe, ahubwo hari haregewe kuba yarahuguje abana ba Bagenzi Jean inzu yabasigiye, no kuba Bagenzi Théogène yaragurishije adafite imyaka y'ubukure.

[5] Abazungura ba Bagenzi Jean nabo ntibishimiye imikirize y'urubanza, bajurira bavuga ko Urukiko Rwisumbuye rwabategetse kwishyura ibyakozwe kandi rwaremeje ko uwakoze amasezerano y'ubugure yari umwana, akaba yaranagurishije ibitari ibye. Bavugaga kandi ko hagendewe ku igenagaciro ryatanzwe na Gahire Athanase hadakozwe igenagaciro rivuguruza.

[6] Urukiko Rukuru rwahurije hamwe ubwo bujurire bwombi, bwandikwa kuri RCA 0229-0231/13/HC/KIG, urubanza rucibwa ku wa 27/06/2014. Urukiko rwemeje ko ubujurire bwatanzwe na Mukarushakiro Gloriose, Bagenzi Théogène na Mukangenzi Céline nta shingiro bufite, ko ubwatanzwe na Gahire Athanase bufite ishingiro. Rwemeje ko urubanza RC 0774/11/TGI/NYGE ruhindutse kuri byose, ko Gahire Athanase atahuguje umutungo uburanwa. Mu bisobanuro Urukiko rwatanze harimo ko n'ubwo amasezerano y'ubugure yakozwe Mukarushakiro Gloriose na Bagenzi Théogène bakiri abana, bitakwitwa guhuguza kuko aho bagiriye imyaka y'ubukure hashize imyaka 8 batarakurikirana iby'ubwo bugure, bikaba byafatwa nk'aho babyemeye.

[7] Mukarushakiro Gloriose na Bagenzi Théogène bajuririye urwo rubanza mu Rukiko rw'Ikirenga, rwandikwa kuri RCAA 0002/15/CS. Mukangenzi Céline we yabanje gukosoza urubanza rwaciwe n'Urukiko Rukuru abona kurujuririra, ubujurire bwe ntibwakirwa kuko yajuriye akererewe. Urubanza ku bujurire bwa Mukarushakiro Gloriose na Bagenzi Théogène rwaciwe ku wa 15/12/2017, Urukiko rwemeza ko ubujurire bwabo bufite ishingiro kuri bimwe, rutegeka Gahire Athanase gusubiza Bagenzi Théogène na Mukarushakiro Gloriose umutungo uburanwa, ariko bakamusubiza 112.823.319 Frw. Rwategetse Gahire Athanase kwishyura Mukarushakiro Gloriose na Bagenzi Théogène, buri wese 2.400.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka, no kwishyura umuhanga Twahirwa Hébert 300.000 Frw.

[8] Urukiko rw'Ikirenga rwatanze ibisobanuro bikurikira:

- Amasezerano ya mbere y'ubugure bw'ikiswe ikigo cy'ubucuruzi giherereye ku Giporoso yasinywe ku wa 06/11/1996, *acte de notoriété* ijyanye n'uwo mutungo yandikwa kuri Bagenzi Théogène ku wa 18/12/1996, bivuze ko ubugure bwabaye Bagenzi Théogène atarandikwaho umutungo yagurishije, akaba rero yaragurishije ibitari ibye, ahubwo byari iby'abazungura ba Bagenzi Jean, iyi mpamvu ikaba ituma ubwo bugure buvanwaho.
- Mu bugure bwa kabiri bwabaye ku wa 04/11/1997, icyashingiweho mu kwerekana ko umutungo ari uwa Bagenzi Théogène, ni *Acte de notoriété* byagaragaye ko yashatswe nyuma y'ubugure bwa mbere, ikaba itashingirwaho no mu bugure bwa kabiri kuko umutungo wari umwe, ukaba ahubwo waragurishijwe mu bice bibiri.
- Ku bijyanye n'imyaka y'ubukure ya Bagenzi Théogène, Urukiko rwasobanuye ko imyaka iri ku cyemezo cy'amavuko ariyo ikwiye gufatwaho ukuri, kuko cyanditswe n'ushinzwe irangamimerere ahereye ku ifishi ya Bagenzi Jean; kuba hari aho Bagenzi Théogène yagiye avuga imyaka itandukanye bikaba bitarutishwa icyemezo cy'amavuko.
- Rwasobanuye kandi ko Gahire Athanase yiyemereye imbere y'Urukiko ko yaguze na Bagenzi Théogène abura amezi abiri ngo yuzuze imyaka y'ubukure. Ku birebana n'urubanza Bagenzi Théogène yigeze kuburana asaba ko hafungurwa amakonti ya se, Gahire Athanase yatanzeho ikimenyetso avuga ko atari kuburana atarageza ku myaka y'ubukure, Urukiko rwasobanuye ko muri urwo rubanza ntaho yigeze yemererwa ubukure, kuko ataricyo cyari kigamijwe.

- Ku bijyanye no kumenya niba amasezerano yarakoranywe uburyarya, Urukiko rwasobanuye ko kuba Gahire Athanase yaraguze umutungo utimukanwa atabanje kubaza niba uwo baguze ariwe nyirawo; icyemezo cya nyir'umutungo kikaba cyarabonetse nyuma yo kuyasinya, hakiyongeraho kuba atarabajije niba uwo baguze afite ububasha n'ubushobozi bwo kugurisha, bigaragaza ko yakoranye amasezerano uburyarya.
- Kuba GAHIRE Athanase yaraguze mu buryarya, akagura na Bagenzi Théogène utari wujuje imyaka y'ubukure kandi agurisha ibitari ibye, amasezerano y'ubugure yo ku wa 06/11/1996 n'ayo ku wa 04/11/1997 agomba guteshwa agaciro.

[9] Gahire Athanase yandikiye Urwego rw'Umuvumyi asaba ko urubanza RCAA 0002/15/CS rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma icyo kibazo, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

[10] Perezida w'Urukiko rw'Ikirenga, mu cyemezo nimero 165/CJ/2019 cyo ku wa 16/09/2019, yemeje ko urubanza rwoherezwa mu bwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe. Dosiye yahawe RS/INJUST/RC 00008/2019/SC, uwitwa Higiro James waguze inzu iburanwa yandika avuga ko yifuza kugoboka mu rubanza ku bushake.

[11] Iburanisha ry'urubanza ryashyizwe ku wa 24/03/2020, ariko ntirwaburanishwa rwimurirwa ku munsi utazwi kubera ingamba zashyizweho zo kurwanya COVID-19. Rwongeye guhamagarwa ku wa 27/05/2020, iburanisha ribera mu ruhame mu buryo bwa video conference ku bireba Bagenzi Théogène ufungiye muri Gereza ya Mageragere, Gahire Athanase yunganiwe na Me Mbaga Tuzinde Mbonyimbuga, Me Rutabingwa Athanase na Me Bandora Alfred; Mukarushakiro Gloriose na bagenzi Théogène bunganiwe na Me Musore Gakunzi Valéry, Me Mberabagabo Balinda Richard na Me Semuhunga N. Silas, naho Higiro James yunganiwe na Me Serugo Jean Baptiste na Me Muhodali Jean de Dieu.

[12] Mbere y'uko iburanisha ritangira mu mizi, habanje gusuzumwa ibibazo bikurikira:

- Ikibazo cyatanzwe na Bagenzi Théogène asaba ko urubanza rusubikwa kubera ko atabashije kuvugana n'abamwunganira, ndetse akaba anifuza kuburana ari mu cyumba cy'iburanisha hamwe n'abamwunganira, hadakoreshejwe ikoranabuhanga.
- Ikibazo cyatanzwe n'abunganira Mukarushakiro Gloriose na Bagenzi Théogène kirebana no kumenya niba Gahire Athanase azakoresha mu rubanza ikimenyetso kigizwe n'amasezerano y'ubugure yo ku wa 04/11/1997, kugira ngo niba kizakoreshwa baregere inyandiko mpimbano (*inscription en faux*).
- Inzitizi yatanzwe n'abunganira Bagenzi Théogène, Mukarushakiro Gloriose na Higiro James bavuga ko ikirego cya Gahire Athanase kidakwiye kwakirwa kuko yandikiye Umuvunyi Mukuru asaba gusuzuma akarengane yagiriwe mu rubanza RCAA0002/15/CS, agasubizwa ko nta karengane kabayemo, ariko Umuvunyi Mukuru akongera kuvuga ko asanga harabayemo akarengane.

[13] Nyuma yo kumva icyo ababuranyi n'ababunganira bavuga kuri ibyo bibazo, Urukiko rwarihererereye rufata ibyemezo bikurikira:

- Ku bijyanye n'isubikwa ry'urubanza risabwa na Bagenzi Théogène:
    - Urukiko rwasanze ari ihame ko ababuranyi bagira uburenganzira bungana imbere y'inteko iburanisha kugira ngo habeho urubanza rutagize uwo rubangamiye. Rwasanze ariko itegeko rishyigikira gukoresha ikoranabuhanga mu mihango yose y'imiburanishirize y'imanza[1]; ibi bikaba byanafasha cyane cyane muri ibi bihe

[1] Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

bidasanzwe bijyanye no gukumira icyorezo cya COVID-19, aho umuntu ufunze adashobora gusohoka ngo yitabe Urukiko.

- Rwasanze kandi Ubwanditsi bw'Urukiko bwaravuganye na Gereza ya Mageragere aho Bagenzi Théogène afungiye, ubuyobozi by'iyo Gereza bwemeza ko Abavoka bifuza kuvugana n'abo bunganira babasanga kuri Gereza cyangwa bakavugana nabo kuri telefone, bakaba bashobora no kuvugana mu gihe cy'iburanisha. Urukiko rwasanze rero nta cyabuza Bagenzi Théogène kuba yaburana hakoreshejwe ikoranabuhanga, yaba ashaka kuvugana n'abamwunganira by'umwihariko agakoresha nimero yatanzwe na Gereza ariyo 0736992303, ibi kandi bikaba bitabangamiye ihame ryo kugira uburenganzira bungana imbere y'inteko iburanisha, kuko nta burenganzira bimuvutsa ugereranyije n'ubuhabwa abandi baburanyi mu gihe cy'iburanisha.

- Ku kibazo kirebana no kuregera ko amasezerano y'ubugure yo ku wa 04/11/1997 ari inyandiko mpimbano:

  - Urukiko, rushingiye ku ngingo ya 75, igika cya 1, y'Itegeko N^{o} 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko nta nyandiko, imyanzuro y'urubanza cyangwa inyandiko ikubiyemo ingingo ziburanishwa bishobora kohererezwa urukiko nyuma y'inama ntegurarubanza, rwasanze ibisabwa n'abunganira Mukarushakiro Gloriose na Bagenzi Théogène bidashobora gusuzumwa kuko bagombaga kubikora mbere y'uko inama ntegurarubanza isozwa.

  - Ibyo bavuga ko umwimerere w'inyandiko bashaka kuregera ko ari impimbano utari uhari igihe urubanza rusubirishwamo rwaburanwaga, ndetse no mu nama ntegurarubanza ukaba utaratanzwe, Urukiko rwasanze nta shingiro bifite kuko hakurikijwe ibiri muri dosiye, bigaragara ko inyandiko y'umwimerere y'amasezerano yo ku wa 04/11/1997 yashyikirijwe Urukiko mu iburanisha ry'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane ryo ku wa 15/11/2017, impande zose ziburana zikaba zari muri urwo rubanza ndetse zikagira icyo ziyivugaho, Gahire Athanase akaba yarayisubiranye ku wa 30/01/2020, ku buryo nta cyabuzaga ushaka kuyiregera nk'inyandiko mpimbano kubikora kuva ku wa 15/11/2017 kugeza ku wa 30/01/2020.

- Ku nzitizi ijyanye no kuba Umuvunyi Mukuru yarasubije ko nta karengane kabaye mu rubanza, akongera kwandika avuga ka habaye akarengane; Urukiko rwemeje ko iyo nzitizi nta shingiro ifite, kuko Urwego rw'Umuvunyi atari Urukiko, ahubwo ari urwego rw'ubutegetsi rushobora gusubira ku cyemezo rwari rwafashe, bitewe n'ibisobanuro rwahawe.

[14] Nyuma yo gufata ibyemezo kuri ibyo bibazo, urubanza rwarakomeje, ariko iburanisha ntiryashobora kurangira, Urukiko rwemeza ko rizakomeza ku wa 28/05/2020. Kuri iyi tariki, ababuranyi baritabye hamwe n'ababunganira, bajya impaka ku mpamvu Gahire Athanase yashyikirije Urukiko avuga ko mu rubanza RCAA 00002/15/CS habayemo akarengane.

[15] Gahire Athanase avuga ko akarengane ke gashingiye ku mpamvuzikurikira:

- Kuba urubanza RCAA 0002/15/CS rusabirwa gusubirwamo rwarakiriwe kandi ubujurire bwari bwatanzwe impitagihe.
- Kuba ikirego cyatanzwe na Bagenzi Théogène na Mukarushakiro Gloriose cyarakiriwe kandi baragitanze batinze, nyuma yo gutakaza ububasha bwo gusaba ko amasezerano y'ubugure ateshwa agaciro.
- Kuba Urukiko rwaremeje ko inzu iburanwa ari iya Bagenzi Jean aho kuba iya Bagenzi Théogène kandi yari imwanditseho.

- Kuba Urukiko rwaremeje ko Bagenzi Théogène yari umwana igihe yagurishaga inzu iburanwa kandi yari yujuje imyaka y'ubukure.
- Kuba Urukiko rwaremeje ko yakoranye uburyarya amasezerano y'ubugure kandi atari byo.

[16] Abaregwa bahuriza ku kuba Bagenzi Théogène yaragiranye na Gahire Athanase amasezerano y'ubugure atarageza ku myaka y'ubukure, kandi agurisha umutungo wa se Bagenzi Jean, abazungura be bakaba bafite ububasha bwo gusaba ko ayo masezerano ateshwa agaciro kuko atubahirije amategeko. Bavuga kandi ko ikibazo cyo gukererwa kujurira kitigeze kivugwaho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, bityo kikaba kitasuzumwa kuri uru rwego.

[17] Urukiko rwapfundikiye iburanisha, rumenyesha ababuranyi ko urubanza ruzasomwa ku wa 26/06/2020, ariko mu mwiherero warwo, rusanga hari ibyo rugomba kubanza kugenzura mbere yo guca urubanza. Ni muri urwo rwego hakozwe ibi bikurikira:

- Ku wa 07/07/2020, Urukiko rwandikiye Umuyobozi w'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda rumusaba amakuru ajyanye n'ikibanza UPI :1/03/05/02/402, ni ukuvuga uburyo cyagiye gihererekanywa, nimero cyagiye gihabwa, no kurushyikiriza dosiye yacyo. Icyo kigo cyamenyesheje Urukiko ko amakuru babonye atangirana n'ibarura rusange ry'ubutaka, ko mbere yaho nta kigaragaza ko bwari bwarandikishijwe.
- Ku wa 15/07/2020, Urukiko rwakoze iperereza mu Murenge wa Nyarugenge mu rwego rwo kugenzura ibijyanye n'ifishi y'ibarura ya Bagenzi Jean, umukozi ushinzwe irangamimerere arumenyesha ko itagaragara mu bubiko bw'Umurenge. Mu bindi uwo mukozi yasobanuriye Urukiko ni uko ku yandi mafishi abitse mu Murenge, kimwe no ku ifishi ya Bagenzi Jean, nta mukono w'umuyobozi na kashe biriho.
- Ku wa 21/07/2020, Ubwanditsi bw'Urukiko bwandikiye Umushinjacyaha Mukuru, busaba dosiye RONPJ 05497/S3/14/NK/MB yaregwagamo Bagenzi Théogène, Mukarushakiro Gloriose na Mukangenzi Céline, icyaha cyo guhimba cyangwa guhindura inyandiko no gutangariza ibitari byo Umwanditsi w'Irangamimerere. Ubushinjacyaha Bukuru bwagejeje ku Rukiko dosiye RONPJ 05497/S3/14/NR n'imigereka yayo, Ibiro by'Ubugenzacyaha byashyikirije Ubushinjacyaha ku rwego rwisumbuye rwa Nyarugenge ku wa 09/05/2013. Mu migereka kuri dosiye yari yoherejwe n'Ubugenzacyaha, harimo ifishi y'ibarura (*original*) ya Bagenzi Jean hamwe na *Mandat de Perquisition* yahawe Umugenzacyaha ku wa 24/04/2014, kugirango arebe kandi afatire (*procéder à la visite et à la perquisition*) ifishi y'ibarura ya Bagenzi Jean iri mu Murenge wa Nyarugenge.
- Urukiko rwagejejweho kandi kopi y'ibaruwa Ubushinjacyaha ku rwego Rwisumbuye rwa Nyarugenge bwandikiye Umushinjacyaha Mukuru bumumenyesha ko ifishi y'umwimerere yari yasabwe ngo ishakirwe muri dosiye 05497/S3/NR/MB yaregwagamo Bagenzi Théogène na bagenzi be, ntayo bwabashije kubona mu bubiko, ariko ko bigaragara ko Ubugenzacyaha bwayishyikirije Ubushinjacyaha ku rutonde rw'ibigize dosiye.
- Ku wa 01/09/2020, Inteko yagiye aho ikiburamwa kiri, kugira ngo irebe imiterere y'inzu iburanwa.

[18] Urubanza rwongeye gushyirwa kuri gahunday'iburanisha ku wa 14/09/2020, hatumizwamo Umutoni Adeline bivugwa ko yasinye ku ifishi y'ibarura ya Bagenzi Jean yemeza ko kopi yayo ihuye n'umwimerere, kugirango agire ibyo asobanuzwa. Kubera ko atabashije kuboneka, iburanisha ryashyizwe ku wa 05/10/2020. Mu byo yasobanuriye Urukiko, harimo ko ariwe wanditse amagambo *copie conforme à l'original* ku ifishi ya Bagenzi Jean, kuko umukono (*écriture*) ari uwe, ariko akaba ashidikanya kuri *signature***.** Yavuze ko abona isa n'iye, ikibazo kikaba ari uko nta tariki n'umwaka biriho ngo agereranye n'izindi nyandiko yasinye, kuko yahinduye uko asinya. Ikindi yabwiye Urukiko ni uko hari igiheibigomba kwandikwa ku mafishi biba bituzuye bitewe n'uwayujuje.

[19] Iburanisha ry'urubanza ryarashojwe, ababuranyi bamenyeshwa ko ruzasomwa ku wa 20/11/2020. Kuri iyo tariki, Urukiko rwasomye urubanza rubanziriza urundi, rwemeza ko mbere y'uko

urubanza rucibwa burundu hagomba gushyirwaho umuhanga uzagaragaza agaciro umutungo ufite n'agaciro k'ibyo Higiro James yongeyeho niba bihari, rusaba ababuranyi kuba bumvikanye ku muhanga mbere yo ku wa 04/12/2020, batamwumvikanaho bakabimenyesha Urukiko kugira ngo rumushyireho, rwemeza ko iburanisha rizakomeza ku wa 09/02/2021. Urubanza ntirwabashije kuburanishwa uwo munsi, rwongera gushyirwa ku wa 08/03/2021.

[20] Ku wa 08/03/2021, nabwo urubanza ntirwabashije kuburanishwa kuko Mukarushakiro Gloriose, Bagenzi Théogène na Higiro James wagobotse mu rubanza batari bishyuye uruhare rwabo ku birebana n'imirimo yakozwe n'umuhanga washyizweho n'Urukiko. Nyuma Mukarushakiro Gloriose na Higiro James bagaragarije Urukiko ko bishyuye umuhanga, Bagenzi Théogène we avuga ko nta bushobozi afite bwo kwishyura, Urukiko rwemeza ko amafaranga ahwanye n'uruhare rwe azashyirwa mu cyemezo cy'Urukiko igihe yaramuka atsinzwe.

[21] Ku wa 15/04/2021, urubanza rwongeye gusubukurwa, ababuranyi bose bahari kandi bunganiwe, ndetse hanitabye umuhanga wakoze igenagaciro kugira ngo agire ibisobanuro atanga. Nyuma y'ibisobanuro byatanzwe n'umuhanga, ababuranyi bahawe umwanya bagira icyo bavuga kuri raporo yakoze. Higiro James ahawe ijambo, yavuze ko yihannye Perezida w'inteko iburanisha, urubanza ruhita rusubikwa kugira ngo akore iby'amategeko ateganya.

[22] Nyuma yo gufata icyemezo ku bwihane, urubanza rwakomeje ku wa 13/07/2021, ariko biba ngombwa ko rwimurirwa ku wa 14/10/2021. Urubanza rwaburanishirijwe mu ruhame, ababuranyi bose bitabye kandi bunganiwe, uretse Bagenzi Théogène wari uhagarariwe na Me Musore Gakunzi Valéry. Higiro James yasabwe gukomeza kugira icyo avuga ku igenagaciro ryakozwe n'umuhanga.

[23] Higiro James, Mukarushakiro Gloriose na Bagenzi Théogène, bavuze ko batemera raporo yakozwe n'umuhanga naho Gahire Athanase n'abamwunganira bavuga ko bemera iyo raporo, kuko umuhanga yayikoranye ubunyamwuga ntaho abogamiye. Urukiko rwapfundikiye iburanisha, rumenyesha ababuranyi ko urubanza ruzasomwa ku wa 12/11/2021.

[24] Muri uru rubanza, ibibazo nyamukuru ababuranyi bagiyeho impaka, byasuzumwe n'Urukiko, ni ibi bikurikira:

- Kumenya niba mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane hatarasuzumwe ikibazo cy'iyubahirizwa ry'ibihe byo kujurira.
- Kumenya niba Bagenzi Théogène yari yujuje imyaka y'ubukure igihe yasinyaga amasezerano y'ubugure bw'umutungo uburanwa.
- Kumenya niba igihe Bagenzi Théogène na Mukarushakiro Gloriose batangaga ikirego, igihe cyo kugitanga cyari cyararenze ku buryo kitagombaga kwakirwa.
- Kumenya niba umutungo uburanwa, wagurishijwe Gahire Athanase, wari uwa Bagenzi Théogène cyangwa niba wari uwa Bagenzi Jean, n'ingaruka zabyo.
- Indishyi zinyuranye zasabwe n'ababuranyi.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane hatarasuzumwe ikibazo cy'iyubahirizwa ry'ibihe byo kujurira

[25] Abunganira Gahire Athanase bavuga ko baburana mbere basabye Urukiko rw'Ubujurire gusuzuma niba urubanza RCA 0022/09/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/06/2014 rwarajuririwe mu gihe cyemewe n'amategeko, kuko iyo urebye nimero y'urubanza rusabirwa gusubirwamo ubona rwarinjiye mu bitabo by'Urukiko ari urwa kabiri mu mwaka wa 2015, kandi imanza zikaba zihabwa nimero hakurikijwe uko zinjiye. Bavuga ko ukurikije ko urubanza rwaciwe mu Rukiko Rukuru ku wa 27/06/2014, bitumvikana uburyo mu bujurire rwafashe nimero yo mu 2015.

[26] Basaba Urukiko ko rwabanza gusuzuma ikibazo cy'iyubahirizwa ry'ibihe byo kujurira, kuko nta cyemezo cyabifashweho mu rubanza rusabirwa gusubirwamo. Bakomeza bavuga ko ingingo ijyanye no gutinda kujurira ari ishingiro ry'akarengane, ko babivuze mu rubanza rusubirishwamo ariko ntibyandikwe muri kopi y'urubanza. Bongeraho ko impamvu bitagiweho impaka mu nama ntegurarubanza ari uko abaregwa nabo ubwabo nta kimenyetso cy'igihe bajuririye bari bafite, ariko ko ibijyanye n'ibihe byo kujurira ari ndemyagihugu, bikaba bigomba gusuzumwa igihe cyose bibonekeye. Bavuga kandi ko bashingiye ku ngingo ya 154 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[2], basanga nta cyabuza Urukiko kubisuzuma kuko atari ikirego gishya batanze, mu gihe babishyize mu myanzuro, bikaba biri no mu byo bashyikirije Urwego rw'Umuvunyi.

[27] Mukarushakiro Gloriose, Bagenzi Théogène n'ababunganira bavuga ko ibyo abunganira Gahire Athanase bagaragaje atari impamvu yo gusubirishamo urubanza ku mpamvu z'akarengane, kuko itari mu ziteganyijwe mu ngingo ya 55 y'Itegeko rigena ububasha bw'Inkiko n'ingingo ya 81 y'Itegeko ryagenderwagaho ubwo uru rubanza rwageraga mu Rukiko rw'Ikirenga.

[28] Higiro James n'abamwunganira bavuga ko muri kopi y'urubanza rusabirwa gusubirwamo, ntaho bigaragara ko ikibazo cy'ibihe byo kujurira cyavuzweho, bivuze ko impande zombi zemeranywaga ko ntagihari. Bavuga ko icyo kibazo kitagarukwaho, kuko batabiburanishije mu rubanza bavuga ko rurimo akarengane.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 55, 2° y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya impamvu zishobora gutuma urubanza rusubirishwamo ku mpamvu z'akarengane, harimo kuba mu icibwa ryarwo harirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese. Ibi bivuze ko, mu gusobanura aho akarengane kabo gashingiye, ababuranyi berekana ibimenyetso cyangwa amategeko byagaragarijwe urukiko mu rubanza basaba ko rusubirishwamo rukabyirengagiza kandi byari kubagirira akamaro. Ibyo bikaba binasobanuye ko ibitaraburanyweho, ni ukuvuga ibyo umuburanyi atagaragarije umucamanza ngo amusabe kubisuzuma, adashobora kuvuga ko yabimurenganyijeho.

[30] Urukiko rurasanga mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, ikibazo kijyanye n'iyubahirizwa ry'ibihe byo kujurira kitarigeze kivugwaho n'ababuranyi, bityo Gahire Athanase akaba atavuga ko yagize akarengane ku kibazo atigeze asaba Urukiko gusuzuma; kubera iyo mpamvu, iyo ngingo y'akarengane ikaba nta shingiro yahabwa.

2. Kumenya niba Bagenzi Théogène yari yujuje imyakay'ubukure igihe yagurishaga umutungo uburanwa

[31] Gahire Athanase n'abamwunganira, batanga ibisobanuro bikurikira:

- Inyandiko n'imvugo za Bagenzi Théogène bigaragara nk'aho yagiye avuka inshuro nyinshi ku matariki atandukanye, bikaba bigoye kumenya igihe yavukiye. Basobanura ko ibimenyetso bijyanye n'ibyemezo by'inkiko, aho yagiye afungwa akanakatirwa, bigaragaza imyirondoro itandukanye itavuga bimwe ku bijyanye n'igihe yavukiye. Bavuga ko hamwe yaburanye yemeza ko yavutse mu 1974, ahandi aburana avuga ko yavutse mu 1976, mu rundi rubanza avuga ko yavutse mu 1978, mu ibaruwa yanditse ari muri gereza ya Huye gereza ikamusinyiraho, avuga ko yavutse mu 1974.

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[2] Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire.
Icyakora, ababuranyi bashobora kwaka inyungu, ibyishyuwe ku bukode n'ibindi bintu by'inyongera byabonetse kuvaaho urubanza rwaciriwe n'indishyi z'igihombo umuburanyi yagize kuva urubanza ruciwe.
Ntibibujijwe ariko mu rwego rw'ubujurire gutanga ibisobanuro bishya cyangwa ibimenyetso bishya bigamijekumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere.

- Bitewe n'uko kuva Bagenzi Théogène yatangira kuburana avuga ko yasinye amasezerano ataragira imyaka y'ubukure, byatumye Gahire Athanase ashakisha mu mirenge y'iwabo aho yaba yarabatirijwe n'aho yize, aho hose agenda anyura mu buyobozi bunyuranye, akabasigira umwirondoro we. Amaze kuvayo, Umuyobozi w'Umurenge wa Simbi yaramuhamagaye amubwira ko Bagenzi Théogène yanditse ashinganisha imitungo ya se, akaba ari muri ubwo buryo yamenye ibaruwa yanditse ari muri gereza igaragaza ko yavutse mu 1974, baranayimufotorera. Bavuga ko Urukiko ruyisabye mu buyobozi bwa Gereza rwayibona.
- *Attestation de naissance* Bagenzi Théogène yatanze nta gaciro Urukiko rwari rukwiye kuyiha, kuko yayikuye mu Gatenga, Kicukiro, Umujyi wa Kigali kandi akomoka i Butare ari naho yavukiye. Bavuga kandi ko acte de naissance cyangwa *Medical Birth Certificate* aribyo byemerwa n'amategeko mu gihe hari ukujya impaka ku gihe umuntu yavukiyeho.
- Ku wa 22/05/1996 Bagenzi Théogène yari afite imyaka y'ubukure, kuko yaburanye mu Rukiko rwa Mbere rw'Iremezo rwa Kigali yiburanira, asaba ko *comptes* za se zamwandikwaho, Urukiko rukabyemera nyamara icyo gihe ntawashoboraga kwiburanira adafite nibura imyaka makumyabiri n'umwe (21).
- Gahire Athanase ntiyari kumenya ko Bagenzi Théogène yagurishije hasigaye amezi abiri ngo yuzuze imyaka y'ubukure nk'uko abaregwa babivuga, kuko nawe ubwe bigaragara ko atazi igihe yavukiye. Yongeraho ko atari nabyo yavuze, ko ahubwo yavuze ko ahereye ku cyangombwa cyatanzwe n'Umurenge wa Gatenga, Bagenzi Théogène yari kuba ashigaje amezi abiri ngo yuzuzeimyaka y'ubukure.
- Ifishi y'ibarura ya Bagenzi Jean abaregwa bagenderaho, Gahire Athanase yayiregeye mu Bushinjacyaha ariko ntibigeze babiburana, kandi icyo bashakaga batanga icyo kirego byari ukumenya niba ifishi iriho koko, ikaba ari n'iya Bagenzi Jean kuko nta ndangamuntu ye iriho. Iyo fishi kandi ntigaragaza itariki yakoreweho, ntigaragaza kashe n'umukono by'urwego ruyitanze. Kuri iyo fishi kandi handitseho Bagenzi, ku buryo ntawamenya niba umwana wandikishijwe ari Théogène cyangwa niba ari undi bitiranwa. Kuva nta mwimerere wayo uhari ngo upimwe, ntacyakwemeza ko iyo fishi yabayeho.
- Bagenzi Théogène yagiye gusaba *jugement supplétif d'acte de naissance* mu rubanza RC 00948/2019/TB/KIC rwaciwe ku wa 19/12/2019, aho yasabaga Urukiko gukosora indangamuntu ye yagaragazaga ko yavutse mu 1976, akabikora yitwaje urubanza rwaciwe n'Urukiko rw'Ikirenga nk'ikimenyetso kandi arirwo rusubirishwamo ku mpamvu z'akarengane. Muri urwo rubanza, Umucamanza yashingiye no ku ifishi ikiburanwaho, yemeza imyaka ya Bagenzi Théogène kandi ikigibwaho impaka. Urwo rubanza rero ntirukwiye gushingirwaho kuko rwashingiye ku manza zikiburanwa.
- Ibyo Bagenzi Théogène avuga ko Gahire Athanase ariwe wamushakiye indangamuntu sibyo, iyo ashaka kumuhimbira yari kuvuga ko yavutse mu mwaka wa 1970 kuko na 1976 ntabwo imyaka yari kuba yuzuye neza. Urukiko ntirwakwita ku bivugwa gusa, rwareba na crédibilité y'ubivuga kuko mu manza aburana agenda ahindura imyaka bitewe n'icyo ashaka.
- N'iyo Bagenzi Théogène yavuga ko yavutse mu 1976, Urukiko ntirwagombaga kwemeza ko n'inzu yagurishije mu 1997, yayigurishije ari mutoya kandi yari afite imyaka 21.

[32] Bagenzi Théogène na Mukarushakiro Gloriose n'ababunganira, basubiza ku bivugwa n'urega mu buryo bukurikira:

- Basanga Urukiko rwarasuzumye neza igihe Bagenzi Théogène yavukiye, kandi nta gushidikanya ko yavutse mu 1978 nk'uko bigaragazwa n'ifishi y'ibarura nimero 7739 yitwa *fiche individuelle de recensement* igaragaza itariki Bagenzi Jean yandikishirijeho umwana we Bagenzi Théogène. Iyi fishi kandi ngo yakozwe Jenoside itarabaho, ikaba ariyo yakwizerwa kuruta imvugo za Gahire Athanase wagiye kumushakira ibyangombwa akiri umwana.
- Ku bijyanye n'ikirego Gahire Athanase yatanze mu Bugenzacyaha, avuga ko bahimbye inyandiko bagahindura imyaka ya Bagenzi Théogène, hari inyandiko igishyingura

by'agateganyo, kuko Ubushinjacyaha bwagiye ku Murenge bugasanga ifishi y'ibarura yaratanzwe n'ubuyobozi kandi ikaba iriho koko.

- Impungenge zo kumenya niba ifishi yarabayeho cyangwa itarabayeho kandi zakuweho n'umutangabuhamya Umutoni Adéline, kuko yemeje ko umukono uriho ari uwe. Yahamije ko ariwe wiyandikiye *copie conforme à l'original*, bikaba bidashoboka ko yabyandika ntabe ariwe usinya.
- Ibaruwa yazanywe na Gahire Athanase ivuga ko Bagenzi Théogène yavutse mu 1974, uyu ntayemera kuko atariwe wayanditse, akaba anibaza uburyo yayibonye kandi ataramuhaye kopi.
- Kuvuga ko hari ukuvuguruzanya ku gihe cy'amavuko, ntacyo byahindura kuko nta kuntu Gahire Athanase yaburana avuga ko afite acte authentique, ngo nagera ku ifishi y'ibarura avuge ko itashingirwaho kandi ariyo yakozwe mbere y'uko bahimba *acte de notoriété*. Kuba iyo fishi idafite kashe n'umukono w'uwayikoze, ikaba yanditseho Bagenzi gusa, ntibyaba impamvu ituma idashingirwaho, kuko ubwanditsi bw'Akarere cyangwa bw'Umurenge budashobora kuvuga ko butazi igihe yakorewe. Ku birebana no kuba yanditseho BAGENZI gusa, bavuga ko babajije abo bireba bakababwira ko nta wundi mwana BAGENZI Jean afite witwa Bagenzi uretse BagenziThéogène. Ikindi ni uko iyo bandikishaga izina ry'umwana mu kinyarwanda, bandikaga rimwe kuko irindi yarihabwaga amaze kubatizwa.

- Hashingiwe ku biteganywa n'ingingo ya 86 y'Igitabo cya mbere cy'amategeko mbonezamubano[3], imyaka y'ubukure igaragazwa n'inyandiko z'irangamimerere, ntabwo igaragazwa n'ibyo Gahire Athanase ashingiraho aribyo ibaruwa Bagenzi Théogène yiyandikiye, irangamuntu ye n'icyemezo cy'amavuko.

[33] Gahire ubwe yiyemereye imbere y'Urukiko rw'Ikirenga ko yaguze na Bagenzi Théogène asigaje amezi 2 ngo yuzuze imyaka y'ubukure, ibyo bikaba bigaragara mu gika cya 27 na 33 by'Urubanza rusabirwa gusubirishwamo. Nk'uko rero biteganywa n'ingingo ya 110 y'Itegeko N^{o} 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, nta gushidikanya ko Gahire Athanase ubwe yemera ko yaguze n'umwana.

- Amasezerano yo ku wa 04/11/1997 yakozwe Bagenzi Théogène afite imyaka 19 n'amezi 10 n'iminsi 4, akaba yari akiri muto. Kuba mu masezerano y'ubugure bigaragara ko Gahire Athanase yaguze inshuro ebyiri, ngo ni uko yashakaga ko nibura hari inshuro imwe byagaragara ko yaguze na Bagenzi Théogène ari mukuru.
- Ku kijyanye n'urubanza rusimbura inyandiko y'amavuko, bavuga ko rwashingiye ku bimenyetso byinshi birimo ifishi y'ibarura ya Bagenzi Jean, ko hatashingiwe ku rubanza rw'Urukiko rw'Ikirenga gusa. Basaba ko inyandiko zose Gahire Athanase agenderaho yazigaragariza umwimerere, kuko zirimo uburiganya bwinshi. Kuri ibi, Gahire Athanase n'abamwunganira bavuga ko amasezerano ya kabiri bayamusabye mu Rukiko akayerekana, akaba ari muri dosiye iri mu Rukiko rw'Ikirenga kuko yayatanze.
- Amasezerano yakozwe n'umwana ateshwa agaciro (*nullité absolue*), agasubizwa uburenganzira bwe. Gusa habaho irengayobora ku bikorwa by'agateganyo bibaho mu buzima busanzwe (*les actes conservatoires et les acte de la vie courante*). Igihe cyose Gahire Athanase adashobora kugaragaza ko Bagenzi Théogène yari afite imyaka y'ubukure, ni ukuvuga imyaka 21 yuzuye, ntashobora kuvuga ko amasezerano afite agaciro.

[34] Higiro James n'abamwunganira bavuga ko ibimenyetso by'imanza n'inyandiko ari ibintu byakozwe nyuma y'amasezerano, ko ataribyo byashingirwaho hemezwa ko amasezerano yakozwe Bagenzi Théogène ari mukuru.

[3] Irangamimerere y'abantu ishobora gusa kwemezwa no kugaragazwa n'inyandiko z'irangamimerere, zandikwa ku buryo bwerekanwa n'iyi nteruro bikagirwa na none, ku buryo budasanzwe, n'imanza zisimbura cyangwa zikosora izo nyandiko.

[35] Ku bijyanye n’ifishi y’ibarura ya Bagenzi Jean, bavuga ko buri muryango nyarwanda wagiraga ifishi imwe, ko rero niba Gahire Athanase avuga ko ataribyo ariwe ukwiye kugaragaza indi fishi ivuguruza iyatanzwe na Bagenzi Théogène. Bavuga kandi ko Bagenzi Théogène ashobora kuba atazi igihe yavukiye, kuko umubyeyi w’umwana ariwe umenya igihe yavukiye, bityo ko ifishi y’ibarura yatanzwe n’ubuyobozi ariyo ikwiyegushingirwaho mu kwemeza imyaka ya Bagenzi Théogène.

[36] Bongeraho ko kuba umutangabuhamya yaremeje ko ifishi yari mu Murenge wa Nyarugenge, kandi ko ariwe wanditse ko kopi y’iyo fishi ihuye n’umwimerere, bivanaho ugushidikanya. Kuba itarabonetse mu Murenge, bikaba ari uko yashyikirijwe Ubushinjacyaha, kandi bukaba bwaremeje ko bwayihawe.

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[37] Ingingo ya 360 y’Itegeko Nº 42/1988 ryo ku wa 27/10/1988 ryerekeye interuro y’ibanze n’igitabo cya mbere cy’urwunge rw’amategeko mbonezamubano ryakoreshwaga ubwo amasezerano y’ubugure yakorwaga, yateganyaga ko ukiri muto ari umuntu w’igitsina icyo aricyo cyose utari wamara imyaka makumyabiri n’umwe avutse. Naho ingingo ya 431 y’iryo Tegeko igateganya ko imyaka y’ubukure ari makumyabiri n'umwe yuzuye, kandi ko kuri iyo myaka umuntu ashobora gukora ibintu byose bimuhuza n'abandi (*capable de tous les actes de la vie civile*), uretse ibiteganywa ukundi n'amategeko.

- Kopi y’ifishi y’ibarura (*fiche individuelle de recencement*) ya se Bagenzi Jean igaragaraho umwana witwa Bagenzi wavutse mu 1978.
- Icyemezo cy’amavuko cyatanzwe n’Umunyamabanga Nshingwabikorwa w’Umurenge wa Gatenga ku wa 03/03/2011 kigaragaza ko yavutse mu 1976.
- Ikarita iranga umuntu igaragaza ko yavutse mu 1976.
- Imanza yagiye aburana, hamwe avuga ko yavutse mu 1976 ahandi akavuga ko yavutse mu 1978[4].
- Kopi y’ urubanza rwaciwe n’Urukiko rw’Ibanze rwa Kicukiro ku wa 19/12/2019, Bagenzi Théogène yaburanye asaba Urukiko gutegeka ko irangamuntu ye ikosorwa, hakandikwa ko yavutse mu 1978 aho kuba mu 1976.

[38] Hakurikijwe ibiteganywa n’ingingo ya 61 y’Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango, irangamimerere[5] y’abantu yemezwa kandi ikagaragazwa n’inyandiko z’irangamimerere zandikwa ku buryo buteganywa n’iri Tegeko. Igihe umuntu yavukiye, ni kimwe mu biranga imimerere y’umuntu, byagombye kugaragazwa n’inyandiko y’ivuka (*acte de naissance*) itangwa n’umwanditsi w’irangamimerere[6], ahereye ku gitabo cy’inyandiko z’amavuko[7].

[39] Mu gihe inyandiko y’ivuka itabashije kuboneka, Urukiko rusanga hashingirwa ku zindi nyandiko zafasha kugaragaza ukuri. Mu nyandiko ziri muri dosiye, harimo inyandiko yitwa ifishi y’ibarura (fiche individuelle de recencement) ya Bagenzi Jean, se wa Bagenzi Théogène, bigaragara ko yatanzwe n’Umurenge wa Nyarugenge. Bene iyi nyandiko ubusanzwe yandikwagamo ibyatangajwe n’umubyeyi ugiye kubaruza umwana ku mwanditsi w’irangamimerere, hashingiwe ku byateganywaga n’ingingo ya 1, iya 3 n’iya 4 z’Itegeko ryo ku wa 19/02/1964 ryerekeye ibarura, ikarita iranga umuntu, no guhindura aho uba (*Recencement, carte d’identité et changement de résidence des Rwandais*). Ingingo ya 1

[4] Mu rubanza RC 0234/14/TB/NYGE rwaciwe n’Urukiko rw’Ibanze rwa Nyarugenge ku wa 05/08/2014, Bagenzi Théoge ne na Mukarushakiro Gloriose basaba kuzungura se, yavuze ko yavutse mu 1978.
Mu rubanza RPA 0085/15/HC/KIG rwaciwe n’Urukiko Rukuru rwa Kigali ku wa 30/06/2015, yavuze ko yavutse mu1976.
Mu rubanza RP 0264/05/TP/KIG rwaciwe n’Urukiko rw’Umujyi wa Kigali ku wa 22/09/2005, yavuze ko yavutse mu1978.
[5] Ingingo ya 2,8º y’Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango: imimerere y’umuntu ni imiterere y’irangamimerere mu rwego rw’amategeko iranga umuntu mu muryango cyangwa mu gihugu bigatuma atandukanywa n’abandi bantu, cyane cyane nk’ubwenegihugu, amazina, igitsina, igihe n’aho yavukiye, aho atuye n’aho abarizwa, isano ye n’ababyeyi cyangwa abo bavukana, ububasha bwa kibyeyi, ibijyanye n’ubushyingiranywe cyangwa ubutane bwe.
[6] Inyandiko y’ivuka iteganywa n’ingingo ya 105 y’Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango.
[7] Igitabo cy’inyandiko z’amavuko giteganywa n’ingingo ya 74 y’Itegeko rimaze kuvugwa.

yateganyaga ko umunyarwanda wese ugejeje ku myaka 16 nibura agomba kujya ku biro bya Komini y'aho aba kugirango yuzuze ibisabwa bijyanye no kubarura abaturage[8]. Ingingo ya 3 igateganya ko abana batarageza ku myaka 16 babaruzwa na se cyangwa nyina igihe nta se bafite, cyangwa bigakorwa n'ubarera[9]. Ingingo ya 4 yo yateganyaga ko kubarura bikorerwa ku ifishi yabugenewe iri ku mugereka wa I[10.]

[40] Ubwo Urukiko rwageraga ku Murenge wa Nyarugenge kugirango rurebe umwimerere wa kopi y'ifishi y'ibarura ya Bagenzi Jean rwashyikirijwe, rwabwiwe ko ntayigaragara mu bubiko bw'Umurenge. Mu gihe cy'iburana, ababuranyi bari bamenyesheje Urukiko ko Gahire Athanase yigeze kuregera ko iyo nyandiko ari impimbano, dosiye ishyingurwa n'Ubushinjacyaha[11]. Iyo dosiye Urukiko rwayisabye Ubushinjacyaha Bukuru, bwohereza dosiye RONPJ 05497/S3/14/NR, Ibiro by'Ubugenzacyaha byashyikirije Ubushinjacyaha ku rwego rwisumbuye rwa Nyarugenge ku wa 09/05/2013.

[41] Mu migereka igize iyo dosiye, hagaragaramo umugereka wa 13 ugizwe na *Mandat de Perquisition* yahawe Umugenzacyaha ku wa 24/04/2014, kugirango arebe kandi afatire (*procéder à la visite et à la perquisition*) ifishi y'ibarura ya Bagenzi Jean iri mu Murenge wa Nyarugenge. Hagaragara kandi umugereka wa 14 wiswe ifishi y'ibarura (*original*) ya Bagenzi Jean, Urukiko rukaba rwarasabye kuwushyikirizwa.

[42] Ku wa 01/09/2020, Ubushinjacyaha ku rwego Rwisumbuye rwa Nyarugenge bwandikiye Umushinjacyaha Mukuru bumumenyesha ko ifishi y'umwimerere yari yasabwe ngo ishakirwe muri dosiye 05497/S3//NR/MB yaregwagamo Bagenzi Théogene na bagenzi be icyaha cyo gukoresha inyandiko mpimbano, ntayo bwabashije kubona mu bubiko, ariko ko bigaragara ko Ubugenzacyaha bwayishyikirije Ubushinjacyaha ku rutonde rw'ibigize dosiye.

[43] Urukiko rurasanga, hakurikijwe ibigaragara muri dosiye Ubushinjacyaha bwakurikiranagaho Bagenzi Théogene na bagenzi be icyaha cyo gukoresha inyandiko mpimbano, umwimerere w'inyandiko yitwa ifishi y'ibarura ya Bagenzi Jean warafatiriwe n'Umugenzacyaha, agendeye kuri Mandat de Perquisition yahawe n'Umushinjacyaha ku wa 24/04/2014, uwo mwimerere ukaza koherezwa nk'umugereka kuri dosiye RONPJ 05497/S3/14/NR Ubugenzacyaha bwashyikirije Ubushinjacyaha ku rwego rwisumbuye rwa Nyarugenge ku wa 09/05/2013. Ubushinjacyaha bwemera ko bwashyikirijwe uwo mugereka, bukavuga gusa ko utaboneka mu bubiko. Urukiko rukaba rusanga rero, umwimerere w'ifishi y'ibarura ya Bagenzi Jean warabayeho.

[44] Kopi y'ifishi y'ibarura ya Bagenzi Jean yashyikirijwe Urukiko, igaragaza ko yemejwe ko ihuye n'umwimerere n'umukozi wari ushinzwe irangamimerere mu Murenge wa Nyarugenge witwa Umutoni Adeline. Uyu mukozi yahamagajwe mu Rukiko nk'umutangabuhamya, abazwa niba ariwe wemeje ibimaze kuvugwa, asobanura ko abona umukono w'ahanditse copie conforme à l'original kimwe n'ahanditse amazina ye n'icyo akora, ari uwe. Ku bijyanye na signature iriho, yavuze ko ishobora kuba ariye n'ubwo idasa n'iyo asinya ubu; avuga kandi ko yahinduye uburyo yasinyaga mbere. Urukiko rusanga n'ubwo umutangabuhamya ashidikanya ku bijyanye n'umukono(signature), bitashoboka kuba ariwe wiyandikiye yemeza ko kopi ihuye n'umwimerere, hanyuma ngo asinyirwe n'undi.

[45] Urukiko rurasanga, imvugo y'umutangabuhamya ishimangira ibyagaragajwe na dosiye y'Ubushinjacyaha, byemeza ko umwimerere w'ifishi y'ibarura ya Bagenzi Jean wabayeho. Kuba hari ahantu hatagize ikintu cyuzuzwaho kuri iyo fishi, byaba ari ikibazo cy'abayuzuzaga nk'uko byasobanuwe n'umutangabuhamya Umutoni Adeline, ariko ntibyasobanura ko itabayeho nk'uko abunganira Gahire Athanase babivuga, cyane ko n'izindi fishi Urukiko rwabonye hari ibitujujeho. Ku

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[8] Toute personne de Nationalité rwandaise, âgée de 16 ans et plus est tenue de se présenter spontanément devant les autorités communales du lieu de sa résidence pour y satisfaire aux formalités de l'inscription en vue du recensement de la population

[9] Le père ou, à défaut, la mère ou le tuteur, sont tenus de faire inscrire au recensement les enfants âgés de moins de16 ans dont ils ont la charge. Ils sont tenus en outre ……

[10] L'inscription en vue du recensement prévue à l'article premier, s'effectue sur des fiches conformes au modèle de l'annexe I du présent texte.

[11] Ubushinjacyaha bwashyinguye dosiye buvuga ko atari ngombwa kuyikurikirana.

bijyanye no kuba nta mukono na kashe biri kuri iyo fishi, umukozi ushinzwe irangamimerere mu Murenge wa Nyarugenge yabwiye Urukiko ko ariko bimeze no ku yandi mafishi, bikaba binumvikana kuko bene iyo fishi yuzuzwagaho amakuru n'abantu batandukanye kandi mu bihe bitandukanye.

[46] Urukiko rurasanga izindi nyandiko zose zivuga imyaka y'amavuko ya Bagenzi Théogène, yaragize uruhare mu makuru azivugwamo, bityo zikaba nta kizere zagirirwa kurusha ifishi y'ibarura atagize uruhare mu biyanditseho.

[47] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ifishi y'ibarura ya Bagenzi Jean, ariyo yashingirwaho nk'ikimenyetso kigaragaza igihe Bagenzi Théogène yavukiye. Iyo fishi igaragaza ko Bagenzi Théogène yavutse mu 1978, bivuga ko igihe yasinyaga amasezerano y'ubugure ku wa 06/11/1996 yari afite imyaka 18, naho ku wa 04/11/1997 yari afite imyaka 19, akaba yarasinye ataragira imyaka 21 y'ubukure.

3. Kumenya niba ubwo Bagenzi Théogène na Mukarushakiro Gloriose batangaga ikirego, igihe cyo kugitanga cyari cyararenze ku buryo kitagombaga kwakirwa

[48] Gahire Athanase n'abamwunganira bavuga ko mu rubanza rusabirwa gusubirwamo, Urukiko rutagombaga kwakira ikirego cya Bagenzi Théogène na Mukarushakiro Gloriose kuko batinze kuregera amasezerano, hashingiwe ku ngingo ya 159 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, irebewe hamwe n'iya 196 y'Itegeko ryo ku wa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano yateganyaga igihe cy'imyaka 10. Bavuga ko Bagenzi Théogène yagombaga kurega mu gihe cy'imyaka 10 guhera mu mwaka wa 1997 amaze kugira imyaka y'ubukure, kugeza mu 2007, urubanza rukaba rero rutaragombaga kubaho kuko bareze igihe giteganywa n'amategeko cyararangiye.

[49] Bagenzi Théogène, Mukarushakiro Gloriose n'ababunganira bavuga ko ibyavugwaga mu ngingo ya 196 y'Itegeko ryo ku wa 30/07/1888 byavanyweho n'ibivugwa mu ngingo ya 159 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011, ibyo bashaka kuyivugisha bikaba ataribyo ivuga kuko nta lésion yabayeho. Bavuga kandi ko iyo exception inabayeho itareba Mukarushakiro Gloriose, kuko amasezerano atayazi ndetse atanayashyizeho umukono.

[50] Higiro James n'abamwunganira bavuga ko ibyo Gahire Athanase n'abamwunganira baburanisha bitavuzweho mu rubanza bavuga ko rwamurenganyije, bikaba rero bitagaragazwa nk'akarengane.

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[51] Mu gusuzuma iki kibazo, ni ngombwa kubanza kumenya itegeko rigomba gukoreshwa. Ingingo ya 159 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano Gahire Athanase n'abamwunganira bashingiraho bavuga ko habaye akarengane, Urukiko rwasobanuye mu rubanza rusabirwa gusubirwamo ko atariyo yashingirwaho hasuzumwa ikibazo, kuko iryo Tegeko ryagiyeho mu 2011, kandi amazezerano aburanwa yarasinywe mu 1996 na 1997.

[52] Urukiko rusanga itegeko rigomba gukoreshwa ari iryakurikizwaga igihe Bagenzi Théogène na Mukarushakiro Gloriose batangaga ikirego mu rwego rwa mbere, aho kuba igihe amasezerano yasinyiwe. Inyandiko yo gutanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge igaragaza ko batanze ikirego ku wa 02/11/2011, Itegeko N° 45/2011 rigenga amasezerano rigatangazwa ku wa 25/11/2011 kandi rigomba gukurikizwa kuva ku munsi ritangarijweho. Bivuga rero ko itegeko ryakurikizwaga igihe Bagenzi Théogène na Mukarushakiro Gloriose batangaga ikirego, ari Itegeko ryo ku wa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano (Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano).

[53] Ingingo ya 196, igika cya 1, y'Itegeko ryo ku wa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano yateganyaga ko igihe cyose uburenganzira bwo gusaba kuburizamo cyangwa gutesha agaciro amasezerano kitashyizwe ku gihe gito n'itegeko ryihariye, ubwo burenganzira bumara imyaka icumi (10). Hashingiwe ku rubanza RCAA 0075/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa

15/02/2013[12], icyo gihe kibarwa guhera igihe urega agamije gutesha agaciro amasezerano, yujurije imyaka y'ubukure.

[54] Ku bireba Bagenzi Théogène, igihe yavukiye kiri mu bibazo byasuzumwe muri uru rubanza, hemezwa ko yavutse mu 1978 nk'uko byagarajwe haruguru, akaba yarujuje imyaka 21 mu 1999. Igihe yatangaga ikirego mu 2011, hari hashize imyaka 12 kuva yujuje imyaka y'ubukure, akaba rero yaratanze ikirego igihe cyo gusaba ko amasezerano y'ubugure yasinye ateshwa agaciro cyararenze, bityo ikirego kikaba kitaragombaga kwakirwa ngo gisuzumwe ku bimureba.

[55] Ku bireba Mukarushakiro Gloriose, ikirego yatanze ni ikigamije kugaruza umutungo avuga ko afiteho uruhare. Ubwo burenganzira bwo gusaba kugaruza umutungo ntiburebwa n'igihe ntarengwa cy'imyaka 10 kivugwa mu ngingo ya 196, igika cya 1, y'Itegeko ryo ku wa 30/07/1888 yavuzwe hejuru, kijyanye n'uburenganzira bwo gusaba kuburizamo cyangwa gutesha agaciro amasezerano. Uburenganzira bwo gusaba kugaruza umutungo urega avuga ko afiteho uruhare burebwa ahubwo n'ingingo ya 647 y'Itegeko rimaze kuvugwa, yateganyaga ko uburenganzira bwo kuregera urukiko bwose, bwaba ari ubugamije guhabwa ibintu (*actions réelles*) cyangwa se kwishyuza imyenda (*actions personnelles*), buzima hashize imyaka mirongo itatu kandi si ngombwa ko uwiyambaza ubwo buzime agaragaza inyandiko isobanura aho akomora uburenganzira bwe, cyangwa se ngo abo aburana nabo bitwaze ko yaba yaraburonkanye uburyarya. Imyaka 30 ivugwa muri iyi ngingo ikaba rero yari itarashira kuva aho Mukarushakiro Gloriose yujurije imyaka y'ubukure[13] ku buryo ashobora kuregera uburenganzira bwe, ikirego cye kikaba cyaragombaga kwakirwa.

4. Kumenya niba umutungo wagurishijwe Gahire Athanase ari nawo uburanwa, wari uwa Bagenzi Théogène cyangwa wari uwa Bagenzi Jean, n'ingaruka zabyo

[56] Gahire Athanase n'abamwunganira bavuga ko mu rubanza RCAA 0002/15/CS habayemo akarengane gakabije mu kwemeza ko umutungo yaguze wari uwa Bagenzi Jean, bakabisobanura mu buryo bukurikira:

- Bagenzi Théogène ajya kugurisha inzu iburanwa yemeje ko ari iye, yerekana icyangombwa yahawe n'Ubuyobozi bw'Akarere ka Kanombe, aricyo *acte de notoriété* nimero 71/96 yo ku wa 18/12/1996, kigaragaza ko inzu imwanditseho. Iyo acte de notoriété ntiyigeze iteshwa agaciro, nta n'indi nyandiko iyivuguruza. Mu gace ka 18 k'urubanza RCAA 0002/15/CS, Urukiko rwirengagije icyo kimenyetso, ahubwo ruvuga ko amatariki y'igihe habereye ubugure yerekana ko Bagenzi Théogène yagurishije ibitari ibye.
- Umuvandimwe wa Bagenzi Théogène ariwe Mukarushakiro Gloriose, ndetse na mukase Uwimana Monique, bashyize umukono ku masezerano yo ku wa 04/11/1997, bakaba batari kuba abahamya muri ayo masezerano iyo baba batabyemera. Ibyo bigaragaza kandi ko n'ubugure bwa mbere bari babuzi, bukaba bwarakozwe mu nyungu z'urugo rwabo, kuko amasezerano yo mu 1997 ashimangira ayo mu 1996. Ikindi ni uko amasezerano yasinywagaho na Myasiro wari nyirarume wa Bagenzi Théogène.
- Bavuga kandi ko n'ubwo Mukarushakiro Gloriose yari kuba akiri umwana, nyina ariwe wari umuhagarariye kandi yemera kuba umuhamya mu masezerano yakozwe na Bagenzi Théogène.
- Urukiko rwemeje ko amasezerano y'ubugure yabaye Bagenzi Théogène atarandikwaho umutungo, kandi atari ko bimeze, kuko nta wundi muntu wagaragajwe waba waranditsweho umutungo uburanwa usibye we.
- Ibyo Bagenzi Théogène avuga ko nyir'umutungo utimukanwa agaragazwa no kuba afite *certificat de titre immobilier*, atagaragazwa na *acte de notoriété* ntibyahabwa agaciro kuko aterekana niba iyo *certificat de titre immobilier* ivuguruza *acte de notoriété*.

[12]Urubanza UMUTONI Marie Bonne Concilie yaregagamo GAKUBA RUBOJO Egide.

[13] Dosiye y'urubanza igaragaza ko Mukarushakiro Gloriose yavutse mu 1983, bivuga ko yujuje imyaka 21 y'ubukure mu 2004. Yatanze ikirego kigamije kugaruza umutungo afiteho uruhare mu 2011, hashize imyaka 7 nyuma yo kuzuza imyaka y'ubukure.

- Batanga ibindi bimenyetso bitandukanye bigaragaza ko Bagenzi Théogène yafatwaga nka nyir'umutungo, bikurikira:

    - Icyemezo cy'Urukiko rwa Mbere rw'Iremezo rwa Kigali nimero 412/K. D/96 cyo ku wa 22/05/1996 gifungura konti za Bagenzi Jean.
    - Ibaruwa Banki y'Abaturage y'u Rwanda yandikiye Burugumesitiri wa Komini Kanombe imusaba gufatira umutungo wa Bagenzi Théogène kubera ko yakekwaga kugira uruhare mu cyaha cyakorewe iyo Banki.
    - Ibaruwa N° 963/05.09.01/4 yo ku wa 13/11/1997 Burugumesitiri Kalinamalyo Théogène yandikiye Umuyobozi Mukuru wa Banki y'Abaturage asaba gufungura inzu ya Bagenzi Théogène: iyo nyandiko ikaba igaragaza ko n'ubuyobozi bufite ubutaka mu nshigano zabwo bwafataga Bagenzi Théogène nkanyir'umutungo.

[57] Gahire Athanase n'abamwunganira batanga kandi ibisobanuro bikurikira:

- Gahire Athanase ntiyigeze amenya ko umutungo uburanwa ari uwa Bagenzi Jean, ahanditse muri acte de notoriété ko Bagenzi Théogène yasigiwe umutungo na se byari inkomoko yawo, bikaba ari imvugo ya kinyarwanda nk'uko mu bisanzwe iyo umuntu agusigiye ikintu bakimwitirira, ariko ntacyagaragazaga ko wigeze wandikwa kuri Bagenzi Jean. Akaba ari no muri urwo rwego mu masezerano y'ubukode yo ku wa 01/08/1995, banditse ko akodesheje inzu Bagenzi Théogène yasigiwe na Se. Ayo masezerano y'ubukode yabaye ataragura, agiye kugura ahabwa icyemezo cy'ubuyobozi kigaragaza ko umutungo ari uwa Bagenzi Théogène, uburyo wamugezeho bikaba ari ibireba umuryango.
- Ku wa 18/12/1996, sibwo Bagenzi Théogène yahawe acte de notoriété, ahubwo umutungo uburanwa wari usanzwe umwanditseho, n'ubuyobozi bukaba bwaramufataga nka nyir'umutungo. Icyabaye ku itariki ya 18/12/1996 ni ukumuhindurira, binyuze muri gahunda nshya yari iriho yo gutanga ibyangombwa, kandi siwe wenyine wahinduriwe.
- Kuba hari ibyangombwa bibiri byatangiwe umunsi umwe, byatewe n'uko bagiye guhinduza hakozwe icyangombwa cy'aho Gahire Athanase aguze, n'icy'aho Bagenzi Théogène asigaranye, icyangombwa cya hose gisigaranwa n'ubuyobozi.
- Bavuga kuri raporo yatanzwe n'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda, mu iburanisha ryo ku wa 05/10/2020, abunganira Gahire Athanase bavuze ko bitari ngombwa ko icyo Kigo kigaragaza ko ubutaka bwaguzwe mu 1996 n'ubwaguzwe mu 1997 bwahurijwe kuri UPI imwe igihe cyo kubwandika kuri Gahire Athanase, kuko abugura nta byangombwa bwari bufite.
- Biramutse bigaragaye ko umutungo utari uwa Bagenzi Théogène igihe yawugurishaga, ubwo bugure bwaba bwaremejwe nyuma na ba nyir'umutungo basinya ku masezerano, hashingiwe ku rubanza RC 0234/14/TB/NYGE rwo ku wa 05/08/2014 rwemeje ko abazungura ba Bagenzi Jean ari Mukarushakiro Gloriose na BagenziThéogène.
- Ku bijyanye na cheque yahawe Mukarushakiro Gloriose, Gahire Athanase avuga ko Mukarushakiro Gloriose na nyina Uwimana Monique baje kureba Bagenzi Théogène hari amafaranga yabemereye, aramuhamagara amubwira ko akeneye amafaranga, nawe amusubiza ko atayamuha batarakora *mutation*. Nyuma bagiye guhinduza basanga umutungo warafatiriwe, barabikurikirana birakemuka, abona guha amafaranga Mukarushakiro Gloriose (mu 1998) nk'uko Bagenzi Théogène yari yabimusabye. Kuvuga ko yari ay'ubukode sibyo kuko atari agikodesha.

[58] Bagenzi Théogène, Mukarushakiro Gloriose n'ababunganira, bavuga ko nta karengane kabaye mu rubanza, bagatanga ibisobanuro bikurikira:

- Ku bijyanye na acte de notoriété Gahire Athanase avuga ko yahawe na Bagenzi Théogène igihe baguraga igaragaza nyir'umutungo, bavuga ko inzu iburanwa itigeze iba iya Bagenzi Théogène kugeza hakorwa amasezerano yiswe ay'ubugure yo ku wa 06/11/1996, kuko

Gahire yayikodeshaga ari iya Bagenzi Jean. Bavuga ko iyo *acte de notoriété* nimero 71/96 Bagenzi Théogène yahawe ku wa 18/12/1996, yayihawe atabanje kugaragaza uko umutungo wavuye kuri se Bagenzi Jean ukagera mu maboko ye, ibyo bikumvikanisha ko Gahire Athanase yari azi neza ko aguze umutungo n'utari nyirawo.

- Mbere y'uko Gahire Athanase akora icyitwa amasezerano y'ubugure, yari azi neza ko iyo nzu ari iya Bagenzi Jean, kuko atagaragaza uko yubatswe na Bagenzi Théogène, anayibohoza abaturanyi bakaba baravugaga ko ari iya Bagenzi Jean, ari nayo mpamvu yayikodeshaga mu izina rye nk'uko bigaragara mu masezerano yo ku wa 01/08/1995. Ikindi ni uko *acte de notoriété* ubwayo itagaragaza nyir'umutungo utimukanwa, ahubwo agaragazwa na *certificat de titre immobilier*.
- Ikindi kigaragaza ko ibyo Gahire Athanase avuga atari ukuri, ni uburyo acte de notoriété yabonetsemo, kuko yakozwe ku wa 18/12/1996 kuri nimero 71/96, uwo munsi Gahire Athanase agahabwa indi bikurikirana ifite nimero 72/96, nyamara amasezerano y'ubugure yarakozwe mbere ku wa 06/11/1996.
- Ku mpamvu ya *acte de notoriété*, handitse ko Bagenzi Théogène yandikishije umutungo yasigiwe na se Bagenzi Jean, iyo *acte* ubwayo ikaba igaragaza nyir'umutungo. Gahire Athanase yagombaga kubaza icyemezo bitaga *titre foncier* mbere y'uko agura, cyahabwaga nyir'umutungo. Ibyo avuga ko hari ikindi cyangombwa cyasigaye mu buyobozi bikaba bidakwiye gushingirwaho n'Urukiko, kuko nta kindi cyangombwa inzu yari ifite. Ibyo Gahire Athanase avuga kandi ko bahinduzaga ibyangombwa sibyo, kuko guhinduza ibyangombwa bidasaba abagabo, kandi bari bagiye babitwaje ariyo mpamvu ababasinyiye ari bamwe.
- Gahire Athanase yari yabonye ko yaguze n'umuntu udafite ububasha, ari nabwo yazanyemo Mukarushakiro Gloriose kugira ngo agaragaze ko n'abazungura bose basinye, ariko yibagirwa Mukangenzi Céline kandi nawe yari mu bazungura.
- Inyandikomvaho Gahire Athanase ashingiraho yakozwe mu buryo bw'uburiganya, ikaba itatanga uburenganzira ku mutungo nk'uko Urukiko rw'Ikirenga rwatanze umucyo kuri icyo kibazo mu rubanza RCAA 0018/13/CS rwaciwe ku wa 24/12/2014 hagati ya Harerimana Emmanuel na Sebukayire Tharcisse, mu gika cyarwo cya 20.
- Mukarushakiro Gloriose na nyina Uwimana Monique bashyizwe mu masezerano y'ubugure batari bahari, kuko Gahire Athanase yababonye mu 1998, Mukarushakiro Gloriose aje kwaka uruhare rwe k'ubukode bw'inzu ya se Bagenzi Jean. Ikindi kigaragaza ko Mukarushakiro Gloriose atari muri ayo masezerano, ni uko *chèque* bavuga ko yahawe, yatanzwe ku wa 14/05/1998 mu gihe icyitwa amasezerano y'ubugure yakozwe ku wa 06/11/1996. Kuvuga ko ubugure bwahawe agaciro (*validation*) no kuba Mukarushakiro Gloriose yarasinye ku masezerano ya kabiri sibyo, kuko atari kuba umutangabuhamya kandi nawe ari umuzungura ku rwego rumwe na Bagenzi Théogène.
- Kuba baratinze kurega, byatewe n'uko bari batarabona ubushobozi bwo gushaka abanyamategeko**.**

[59] Abunganira Higiro James bavuga ko ibyasobanuwe mu rubanza RCAA 0002/15/CS bihagije kugira ngo Urukiko rubone ko ibyo Gahire Athanase avuga nta shingiro bifite, kuko yari asanzwe azi neza ko uwo mutungo ari uwa Bagenzi Jean wapfuye mu 1994. Ibi bikagaragazwa n'amafaranga y'ubukode yishyuye Bagenzi Théogène ubwe akiyandikira ko ari ubukode ku mutungo wa se Bagenzi Jean, ibyo bikaba bigaragara mu nyandiko yo ku wa 01/08/1995.

[60] Bongeraho ko hari ukuvuguruzanya hagati ya Gahire Athanase n'abamwunganira gukwiye kumutsindisha, kuko abamwunganira bavuga ko mu masezerano y'ubukode umutungo wari uwa Bagenzi Jean, nyuma yaho ukajya mu maboko ya Bagenzi Théogène n'ubwo batagaragaje uko yawubonye (*transfert*). Gahire Athanase we yabwiye Urukiko ko kuvuga ko umutungo ari uwa Bagenzi Jean ari imvugo ya kinyarwanda, kandi imvugo ya kinyarwanda ikaba itashyirwa mu nyandiko.

[61] Ku bijyanye na raporo yatanzwe n'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda, bavuga ko Urukiko rwakwita ku kuba nta byangombwa by'ikibanza biboneka kuva mu 1996 kugeza mu 2011, bigaragaza aho Gahire Athanase yagiye agurira ibigo by'ubucuruzi, ibyo bikaba ubundi bitashoboka iyo aba yaraguze koko agahabwa n'ibyangombwa.

UKO URUKIKO RUBIBONA

a. Ku bijyanye no kumenya niba umutungo wagurishijwe Gahire Athanase ari nawo uburanwa, wari uwa Bagenzi Théogène cyangwa wari uwa Bagenzi Jean.

[62] Ibimenyetso Gahire Athanase atanga bigaragaza ko umutungo uburanwa wari uwa Bagenzi Théogène igihe yawuguraga, akavuga ko byirengagijwe n'Urukiko mu rubanza rusabirwa gusubirwamo, bigizwe n'ibi bikurikira:

- *Acte de notoriété* nimero 71/96 yatanzwe n'Ubuyobozi bw'iyari Komini Kanombe ku wa 18/12/1996. Avuga ko iyo *acte de notoriété* yatanzwe hasimburwa ikindi cyangombwa cyagaragazaga ko umutungo ari uwa Bagenzi Théogène, kikaba cyarasigaranywe n'Ubuyobozi.
- Kuba Umuvandimwe wa Bagenzi Théogène witwa Mukarushakiro Gloriose, ndetse na mukase Uwimana Monique barashyize umukono ku masezerano yo ku wa 04/11/1997 nk'abatangabuhamya, bivuga ko bemeraga ubugure.
- Inyandiko zinyuranye zigaragaza ko Bagenzi Théogène yafatwaga nka nyir'umutungo:
    - Icyemezo cy'Urukiko rwa Mbere rw'Iremezo rwa Kigali nimero 412/K. D/96 cyo ku wa 22/05/1996 gifungura konti za Bagenzi Jean.
    - Ibaruwa Banki y'Abaturage y'u Rwanda yandikiye Burugumesitiri wa Komini Kanombe imusaba gufatira umutungo wa Bagenzi Théogène.
    - Ibaruwa nimero 963/05.09.01/4 yo ku wa 13/11/1997 Burugumesitiri wa Komini Kanombe yandikiye Umuyobozi Mukuru wa Banki y'Abaturage, asaba gufungura inzu ya Bagenzi Théogène.

[63] *Acte de notoriété* nimero 71/96 yo ku wa 18/12/1996 igaragaza ko hakiriwe 55.000 Frw yo kwandikisha umutungo Bagenzi Théogène yasigiwe na se Bagenzi Jean, wapfuye, uri ku Giporoso mu Murenge wa Kanombe. Kimwe mu bigaragara muri iyi nyandiko, ni uko umutungo Bagenzi Théogène yandikishaga yawusigiwe na se.

[64] Mu nyandiko zigize dosiye, harimo amasezerano yakozwe ku wa 01/08/1995, Gahire Athanase yemeza ko yishyuye Bagenzi Théogène amafaranga 70.000 ku nzu za se Bagenzi Jean, y'amezi abiri kuva ku wa 01/08/1995 kugeza ku wa 01/10/1995, ababuranyi bakaba bemeranya ko yari ay'ubukode bw'umutungo uburanwa.

[65] Mu nyandiko zashyikirijwe Urukiko kandi, harimo dosiye ifite nimero 05497/S3/14/NR Urwego rw'Ubugenzacyaha rwohereje Ubushinjacyaha ku rwego rwisumbuye rwa Nyarugenge, rumenyesha ko Bagenzi Théogène, Mukarushakiro Gloriose, na Mukangenzi Céline bakurikiranyweho icyaha cyo gutangariza ibitaribyo Umwanditsi w'Irangamimerere, gukoresha inyandikompimbano n'ubwinjiracyaha mu kwambura ikintu cy'undi hakoreshejwe amayeri. Kuri *côte* ya 9 y'iyo dosiye, hagaragara ibazwa ry'urega Gahire Athanase, mu byoyasobanuye akaba yaravuze ko mu bugure bwa mbere Bagenzi Théogène yabagaragarizaga ko nta wundi muvandimwe yasigaranyenyuma ya Jenoside yakorewe Abatutsi, ko bose bapfuye, ndetse abereka icyangombwa cy'Urukiko rw'Ibanze rwa Nyamirambo cyamuheshaga uburenganzira ku mafaranga ya se yari muri Banki y'Abaturage ya Gikondo, ahamya ko batari kuyamuha iyo aba afite abandi bavukana. Iyi mvugo ya Gahire Athanase, igaragaza ko igihe cyo kugura yagize impungenge ko Bagenzi Théogène afite abandi bavukana basangiye umutungo, akaba atari kuzigira iyo Bagenzi Théogène aba yaramweretse ibyangombwa by'uko umutungo ari uwe ku giti cye nk'ukoabiburanisha.

[66] Ibimaze kuvugwa mu gika kibanza, bihujwe n'ibikubiye mu masezerano yo ku wa 01/08/1995, bigahuzwa n'ibyanditse muri *acte de notoriété* nimero 71/96 yo ku wa 18/12/1996, bigaragaza ko umutungo uburanwa wari usanzwe ari uwa Bagenzi Jean wapfuye. Kuri ibyo hiyongeraho imvugo zivuguruzanya za Gahire Athanase, aho hamwe yemeza ko mbere y'uko agura yeretswe ibyangombwa bigaragaza ko umutungo ari uwa Bagenzi Théogène, bigasigara mu buyobozi muri gahunda yo guhinduza ibyangombwa, ahandi akavuga ko uwo mutungo utagiraga ibyangombwa. Urukiko rusanga, nta kigaragaza uburyo uwo mutungo waje kuva kuri Bagenzi Jean ukaba uwa Bagenzi Théogène, kandi atari we muzungura wenyine.

[67] Ingingo ya 50, igika cya mbere, y'Iteka ryo ku wa 20/07/1920 rishyiraho igitabo cya kabiri cy'amategeko mbonezamubano, ryakurikizwaga igihe Bagenzi Théogène yiyandikishagaho umutungo, yateganyaga ko ihererekanya ry'umutungo kubera urupfu ridashobora kubaho ridakozwe n'icyemezo cy'urukiko (rubifitiye ububasha) rw'aho umutungo utimukanwa uherereye, kandi bigatangazwa14. Igika cya 2 cy'iyo ngingo cyateganyaga ko icyo cyemezo cyafatwaga ari uko umucamanza amaze gusuzuma inyandiko zose zigaragaza uburenganzira bw'usaba kwandikwaho umutungo[15]. Nta cyemezo cy'urukiko cyagaragajwe, cyavanye umutungo kuri Bagenzi Jean wapfuye, kikawuha Bagenzi Théogène, bivuga rero ko atashoboraga gusaba kuwandikwaho kandi nta cyemezo kiwumuha, bityo na *acte de notoriété* nimero 71/96 yo ku wa 18/12/1996 igaragaza ko awiyandikishijeho ikaba nta gaciro yahabwa. Uwo murongo ni nawo wafashwe n'uru Rukiko mu rubanza RCAA 0018/13/CS, Harerimana Gaspard yaregagamo Sebukayire Tharcisse. Muri urwo rubanza, Urukiko rwasobanuye ko Sebukayire yabonye icyangombwa cy'ubutaka bitanyuze mu nzira zimuha uburenganzira kuri ubwo butaka, bituma rutesha agaciro icyo cyangombwa.

[68] Urukiko rurasanga kandi bitarasabaga ko habaho urundi rubanza rutesha agaciro acte de notoriété nk'uko abunganira Gahire Athanase babivuga, kuko atari inyandikomvaho iteshwa agaciro ari uko binyuze mu nzira zihariye[16], harebwe igisobanuro cy'inyandikomvaho gitangwa n' ingingo ya 11 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, hakanarebwa uburyo iyi nyandiko yakozwemo. Ingingo ya 11 imaze kuvugwa, iteganya ko inyandikomvaho ari iyanditswe cyangwa yakiranywe imihango yabugenewe n'umukozi wa Leta ufite ububasha bwo gukora mu ifasi y'aho yandikiwe. Iteka rya Minisitiri Nº 01/11/1990 ryo ku wa 30/11/1990 ryerekeye impapuro nyemeza z'ubutaka zibikwa na Komini (*conservation foncière communale*) risobanura *acte de notoriété*, rikagaragaza uburyo yandikwaga, rikanagaragaza umukozi wa Leta wari ufite ububasha bwo kuyandika.

[69] Ingingo ya mbere, agace ka mbere, y'Iteka rya Minisitiri Nº 01/11/1990 ryavuzwe haruguru, isobanura ko icyemezo gihamya nyir'ikibanza (*acte de notoriété foncier*) ari icyangombwa cyerekana by'agateganyo ko umuntu afite uburenganzira ku butaka buri ahantu hadafite pula (*plan*) y'ikatabibanza yemewe. Ingingo ya 6 igasobanura ko icyemezo gihamya nyir'ikibanza gitangwa kandi kikabikwa n'ubutegetsi bwa Komini hakurikijwe amabwiriza akubiye muri iryo Teka. Ingingo ya 10, igika cya 2, yo isobanura ko icyemezo gihamya nyir'ikibanza kigizwe n'inyandiko igaragaza ubutunzi bw'ubutaka hamwe n'urupapuro rwerekana igipimo cy'ikibanza, iyo nyandiko igashyirwaho umukono na Burugumesitiri waKomini cyangwa umuhagarariye.

[70] Ingingo ya 10, igika cya 2, isobanura kandi ko urugero (*un modèle*) rw'imiterere y'icyo cyemezo gihamya nyir'ubutaka ruri ku mugereka w'Iteka rya Minisitiri, rukaba ruteye mu buryo bukurikira:

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[14] Les mutations par décès ne peuvent être opérées qu'en vertu d'une ordonnance du juge du tribunal de première instance de la situation de l'immeuble. La requête de l'héritier ou légataire doit être publiée dans un ou plusieurs journaux ……., à désigner par le juge.

[15] L'ordonnance d'investiture n'est rendue qu'après examen de tous actes ou documents propres à justifier le droit de l'impétrant, et telles mesures d'instruction qu'il appartient à la vigilance du magistrat de prescrire…...

[16] Igika cya mbere cy'ingingo ya 13 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo: Inyandikomvaho ikemura impaka kuri bose mu byerekeye ibiyivugwamo umukozi wa Leta ubigenewe yabereye umuhamya cyangwa yakoze ariko atarengeje ibyo yari ashinzwe gukora. Ibivuzwe muri iyo nyandikomvaho ntawe ushobora kubihakana, keretse biramutse bikurikiranywe mu rubanza rushinja icyaha cyo kubeshya mu nyandikomvaho cyangwa umuburanyi aregeye ko iyo nyandikomvaho ari impimbano.

ICYEMEZO GIHAMYA NYIR'IKIBANZA

1. IMPAMYAMUTUNGO Y'IKIBANZA (*ATTESTATION DE POSSESSION DU TERRAIN*)

Nº ………………………………………………………………………………

Jyewe …………………... Burugumesitiri wa Komini ya…………………….

Nemeje ko ikibanza gifite ingero z'imbago ziri ku gishushanyo gikurikira ari icya ……………………………………………………………………….

Burugumesitiri

Umukono

Komini………………….	Segiteri………………	Selire………………..

2. IGISHUSHANYO CYEREKANA IBIPIMO BY'UBUTAKA(*CROQUIS DU LEVE MANUEL DE TERRAIN*)

Bikozwe ku wa……	Na……………………..	ikigereranyo(echelle) cya …………………...
Abahari: Konseye wa Segiteri: Nyir'ikibanza : Abo bahana imbibi :		Umukono

[71] Ku bijyanye na acte de Notoriété N° 71/96 yo ku wa 18/12/1996 yahawe BAGENZI Théogène, iteye mu buryo bukurikira:

(Logo ya Komini Kanombe)

Mod.IV

Vu et approuvé par leBourgmestre (ibi byanditse n'intoki) (Harasinye)

L.C Nº…

Kanombe, le 18/12/1996

ACTE DE NOTORIETE

Quittance Nº :71/96

Reçu de: Bagenzi Théogène
Utuye muri Cellule AyinsangaSegiteri Kanombe

Somme de (montant en chiffre): #55.000 F#En lettres: Cinquante cinq mille Francs rw

Motif: yandikishije umutungo yasigiwe na se BAGENZI Jean (+) uri ku giporoso Segiteri Kanombe. Uwo mutungo ugizwe n'igipangu n'ikibanza.Igipangu gifite m 33.5x17.7x22, naho ikibanza gifite m 17.7x19

Signature des parties contractantes:

Nyir'umutungo (byujujwe n'intoki): BAGENZI Théogène (yasinyeho)

Le Percepteur: (nta cyujujeho)

Signature des témoins:

(Hasinye abantu batatu)

[72] Urukiko rurasanga imiterere ya *acte de Notoriété* nimero 71/96 yo ku wa 18/12/1996 yahawe Bagenzi Théogène, ntaho ihuriye n'imiterere y'icyemezo gihamya nyir'ikibanza (*acte de notoriété*

foncier) giteganywa n'Iteka rya Minisitiri N° 01/11/1990 ryavuzwe haruguru. Rurasanga kandi, igaragara nka kitansi hakurikijwe ibiyikubiyemo, yanditswe na *Percepteur*, ikemezwa na Burugumesitiri; mu gihe Iteka rya Minisitiri riteganya ko umukozi wa Leta ufite ububasha bwo kwandika icyemezo gihamya nyir'ikibanza ari Burugumesitiri. Kubera impamvu zose zimaze gusobanurwa, Urukiko rurasanga *acte de notoriété* nimero 71/96 itafatwa nk'inyandikomvaho iteganywa n'ingingo ya 11 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ikaba rero ishobora kuvuguruzwa hatabayeho urubanza ku kirego cyerekeye kubeshya mu nyandikomvaho, cyangwa ko umuburanyi aregera ko iyo nyandiko ari impimbano. Uwo ni nawo murongo watanzwe mu zindi manza zaciwe n'uru Rukiko[17].

[73] Ikindi kimenyetso Gahire Athanase atanga, ni umukono Mukarushakiro Gloriose na nyina Uwimana Monique bashyize ku masezerano yo ku wa 04/11/1997 nk'abatangabuhamya, agasobanura ko biramutse bigaragaye ko umutungo utari uwa Bagenzi Théogène igihe yawugurishaga, ubwo bugure bwaba bwaremejwe nyuma na ba nyir'umutungo basinya ku masezerano. Mu gusuzuma iki kimenyetso, Urukiko rurasanga ari ngombwa kubanza gusesengura agaciro k'iyomikono.

[74] Ku bireba umukono wa Mukarushakiro Gloriose, ababuranyi bemeranya ko yari afite imyaka 14 igihe ayo masezerano yakorwaga. Hakurikijwe ibiteganywa n'ingingo za 360 na 431 z'Itegeko N° 42/1988 ryo ku wa 27/10/1988 ryerekeye interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano[18] ryakoreshwaga ubwo amasezerano yakorwaga, Mukarushakiro Gloriose yari atarageza ku myaka 21 y'ubukure, akaba atarashoboraga kugira ibintu akora bimuhuza n'abandi (*non encore capable de tous les actes de la vie civile*). Aramutse yarasinye ku masezerano y'ubugure, ntabwo umukono we wagira agaciro mu rwego rw'amategeko.

[75] Uwo murongo ni nawo ugaragara mu rubanza RCAA 0075/11/CS rwo ku wa 17/02/2013, Umutoni Marie Bonne Concilie yaregagamo Gakuba Rubojo Egide na Nyirinkindi Louis Marie, rwasesenguye agaciro k'amasezerano yasinywe n'utaragera ku myaka y'ubukure. Muri urwo rubanza, Urukiko rushingiye ku ngingo ya 431 y 'Itegeko N° 42/1988 ryo ku wa 27/10/1988 ryavuzwe haruguru, runifashishije ibisobanuro by'abahanga[19], rwagaragaje ko amasezerano yakozwe n'umwana agomba guteshwa agaciro bitabaye ngombwa kugaragaza ko hari icyo uwayakoze yatakaje kubera guhendwa, iyo ajyanye n'ibikorwa bishobora kubangamira bikomeye inyungu z'umwana, nko gufata imyenda, kugwatiriza imitungo, kugurisha imitungo itimukanwa cyangwa iy'ubucuruzi, kwiyambura uburenganzira n'ibindi. Uwo murongo niwo ugaragara kandi mu bisobanuro by'abahanga mu mategeko banyuranye[20].

[76] Ku bireba umukono wa UWIMANA Monique n'ububasha bwo guhagararira MUKARUSHAKIRO Gloriose, isesengura rirakorwa hagendewe ku biteganyijwe mu Itegeko N° 42/1988 ryo ku wa 27/10/1988 ryerekeye interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano ryavuzwe haruguru, ku byerekeye ibyo umubyeyi ashinzwe (*Des attributs de l'autorité parentale*). Ingingo ya 349 y'iryo Tegeko, iteganya ko ububasha bwa kibyeyi

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[17] Urubanza RCAA 0015/09/CS rwo ku wa 29/04/2011, Nyirabizimana Zilipa yaregagamo Musoni Ndamage Thaddée, para 19-20.
Urubanza RS/INJUST/RC 00024/2018/SC rwo ku wa 21/02/2020, haburana Ngizweninshuti Albert na Muhima Giovanni, para 26.
[18] Ingingo ya 360: ukiri muto ni umuntu w'igitsina icyo aricyo cyose utari wamara imyaka makumyabiri n'umwe avutse. Ingingo ya 431: Ubukure bushyizwe ku myaka makumyabiri n'umwe yuzuye, kuri iyo myaka umuntu ashobora gukora ibintu byose bimuhuhuza n'abandi, uretse ibiteganywa ukundi n'amategeko
[19] Sont annulables sans qu'il soit nécessaire de prouver lésion: les actes de disposition très importants et donc gros de conséquences pour le mineur non émancipé: les emprunts, les hypothèques, les aliénations d'immeubles ou de droits immobiliers…; Jaques Delisle, Les Cahiers de droit, vol.2, 1956, p.91.
[20] Lorsque le mineur fait seul un acte d'administration, l'acte n'est pas nul de plein droit. Le mineur pourra le faire annuler s'il présente un caractère lésionnaire. En ce qui concerne les actes de disposition, la règle est beaucoup plus stricte. Lorsque le mineur passe seul un acte que l'administrateur légal n'aurait pas pu faire sans formalité particulière, c'est-à-dire si le mineur passe seul un acte de disposition grave, l'acte est nul; Laëtitia Stasi, Droit civil, Personnes, Incapacités, Famille, édition Paradigme, 2007-2008, p.82
Les incapacités d'exercice sont très fortes en ce qui concerne les actes de disposition. Les mineurs non émancipés n'ont jamais la capacité de les accomplir; Sebastien de la Touane et Camille Le Douaron, Repertoire de droit civil, Tome V, Dalloz, 2009, p.45, n° 357.

(*autorité parentale*) bugizwe cyane cyane n'uburenganzira bwo kumenya umwana, kumucungira umutungo no kwikenuza ibiwukomokaho bikurikije amategeko. Ingingo ya 352, igika cya 1, yo igateganya ko se w'umwana, cyangwa nyina igihe se adahari, ariwe umuhagararira mu bikorwa bimuhuza n'abandi. Naho ingingo ya 353 iteganya ko gutanga, kugurisha cyangwa kugwatiriza ibintu by'umwana ku buryo bigabanura umutungo we, bidashobora gukorwa nta ruhusa rw'Urukiko.

[77] Ibiteganyijwe mu ngingo zivuzwe mu gika kibanza, byumvikanisha ko ububasha bwa kibyeyi buhabwa nyina w'umwana iyo se adahari, bukajyana no kumucungira umutungo ndetse no kumuhagararira mu bikorwa bimuhuza n'abandi; ariko ibikorwa bishobora kugabanura umutungo w'umwana birimo kuwugurisha, bikaba bitashoboka bidatangiwe uruhusa n'Urukiko. Ibi kandi si umwihariko w'u Rwanda, kuko bigaragara no mu mategeko y'ibindi bihugu[21], bikanagarukwaho n'abahanga mu mategeko. Umuhanga mu mategeko, Laëtitia Stasi, asobanura ko ibikorwa bishobora kugabanura umutungo w'umwana bidashobora gukorwa n'ababyeyi, n'iyo baba babyumvikanyeho, bidatangiwe uruhusa n'umucamanza. Igihe urwo ruhusa rutatanzwe, ibyakozwe biba imfabusa[22].

[78] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga kuba Mukarushakiro Gloriose na nyina Uwimana Monique barashyize umukono ku masezerano y'ubugure yo ku wa 04/11/1997, bitaba ikimenyetso ko Mukarushakiro Gloriose nk'undi muzungura wa Bagenzi Jean yemeye ubugure, kuko umukono wa Mukarushakiro Gloriose utari ufite agaciro mu rwego rw'amategeko, na nyina akaba atari afite ububasha bwo kugira icyo akora nk'umuhagarariye, gifite ingaruka zo kumugabanyiriza umutungo bitewe n'uko kimwambura uburenganzira ku mutungo uburanwa.

[79] Ku bireba inyandiko Gahire Athanase atanga nk'ikimenyetso cy'uko Bagenzi Théogène yafatwaga nka nyiri umutungo uburanwa:

- Icyemezo cy'Urukiko rwa Mbere rw'Iremezo rwa Kigali nimero 412/K. D/96 cyo ku wa 22/05/1996 gifungura konti za Bagenzi Jean, ntacyo cyafasha kuko ntaho kivuga ibijyanye n'umutungo uburanwa.
- Amabaruwa Banki y'Abaturage y'u Rwanda yandikiye Burugumesitiri wa Komini Kanombe[23], n'iyo uyu Muyobozi yandikiye iyo Banki ku wa 13/11/1997, bigaragara ko yanditswe nyuma y'uko amasezerano y'ubugure bw'umutungo uburanwa asinywe, akaba rero atafasha kumenya niba igihe aya masezerano yasinywaga, Bagenzi Théogène yari nyiri umutungo cyangwa yarafatwaga atyo.

[80] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga umutungo uburanwa, Bagenzi Théogène yagurishije Gahire Athanase, wari uwa Bagenzi Jean, bityo nyuma y'urupfu rwe, ukaba warasigaye uhuriweho n'abazungura be, ibi bikavuga ko Bagenzi Théogène yagurishije umutungo adafiteho uruhare wenyine. Mu bika bikurikira, harasuzumwa ingaruka zo kuba umutungo wagurishijwe wari uhuriweho n'abazungura ba Bagenzi Jean.

b. Ku bijyanye n'ingaruka (*conséquences*) zo kuba umutungo wagurishijwe wari uwa Bagenzi Jean, ukaba wari uhuriweho n'abazungura be

[81] Kubera ko nta ngingo z'amategeko zisobanura ibyerekeye imicungire y'umutungo uhuriweho n'abazungura (*régime de l'indivision dans le cadre successoral*), harifashishwa ibyemezo byafashwe n'inkiko z'ibindi bihugu n'ibisobanuro by'abahanga, hashingiwe ku ngingo ya 9 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi,

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[21] Reba ingingo ya 389-5 yo mu gitabo cy'urwunge rw'amategeko mbonezamubano cy'Ubufaransa: …Même d'un commun accord, les parents ne peuvent ni vendre de gré à gré, ni apporter en société un immeuble ou un fonds de commerce appartenant au mineur, ni contracter d'emprunt en son nom, ni renoncer pour lui à un droit, sans l'autorisation du juge des tutelles. …, Code Civil, 115 ème édition, Dalloz, 2016, p.706-707.

[22] les actes de disposition graves ne peuvent pas être accomplis par les père et mère, même d'un commun accord; une autorisation préalable du juge des tutelles est indispensable. Cette autorisation est bligatoire sous peine de nullité; Laëtitia Stasi, Droit civil, Personnes, Incapacités, Famille, édition Paradigme, 2007-2008, p. 81.

[23] Muri dosiye yashyikirijwe Urukiko hagaragaramo amabaruwa akurikira:

- Ibaruwa yo ku wa 30/04/1998, igaragaramo ko hari andi yanditswe ku wa 13/11/1997, no ku wa 12/03/1998.
- Ibaruwa yo ku wa 23/03/1998.

iz'umurimo n'iz'ubutegetsi iteganya ko umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko.

c. Ku bireba Bagenzi Théogène

[82] Bagenzi Théogène ntahakana ko yagurishije Gahire Athanase umutungo uburanwa, kandi yemeza ko yawugurishije azi ko uhuriweho n'abazungura ba se Bagenzi Jean. Nk'uko kandi byasobanuwe muri uru rubanza, n'ubwo yakoze amasezerano atarageza ku myaka y'ubukure, ntashobora gusaba ko ayo masezerano ateshwa agaciro kuko yatanze ikirego igihe cyararenze, ikirego kikaba kitaragombaga kwakirwa ngo gisuzumwe ku bimureba.

[83] Mu rubanza rwaciwe ku wa 12/05/2010, Urukiko Rusesa imanza rwo mu Bufaransa rwemeje ko igurisha ry'umutungo uhuriweho ryakozwe n'umwe mu bawusangiye, rigira agaciro ku bireba igipande kigize umugabane we[24]. Umuhanga mu mategeko Guy Venandet na bagenzi be, nabo basobanura ko igurisha ry'umutungo uhuriweho rikozwe n'umwe mubawusangiye, riba rifite agaciro ku bandi ku bireba gusa igipande kigize umugabane w'uwagurishije[25]. Abahanga mu mategeko François Terre, Yves Lequette, na Sophie Gaudemet, bavuga ko ibikorwa byegurira abandi umutungo, bikozwe hirengagijwe ihame ry'uko abawusangiyebagomba kubanza kubyumvikanaho, bigira agaciro ku batabyemeye ku bireba gusa igipande kigize umugabane w'uwabikoze, ariko ntibigire agaciro ku birengaho[26]. Ibi binagarukwaho n'umuhanga mu mategeko Philippe Malaurie[27].

[84] Hashingiwe ku bimaze gusobanurwa mu bika bibiri bibanza, Urukiko rurasanga amasezerano y'ubugure yakozwe na Bagenzi Théogène afite agaciro ku bireba igipande kigize umugabane we gusa ku mutungo uburanwa.

d. Ku bireba Mukarushakiro Gloriose

[85] Mu rubanza rwo ku wa 24/10/2019, Urukiko Rusesa imanza rwo mu bufaransa rwemeje ko ikirego cyo gukurikirana umutungo uhuriweho (utaragabanywa) k'uwufite, kubera kutemera ibyakozwe bitabanje kwemeranywaho n'abawusangiye, ari ikirego kigamije kuwubungabunga, kikaba gishobora gutangwa n'umwe mu bawuhuriyeho[28].

[86] Hashingiwe kuri iki gisobanuro, Urukiko rurasanga Mukarushakiro Gloriose nk'umwe mu bazungura ba Bagenzi Jean, afite uburenganzira bwo gukurikirana umutungo ahuriyeho n'abandi bazungura, wagurishijwe na Bagenzi Théogène bitumvikanyweho n'abazungura bose. Icyakora, nk'uko byasobanuwe haruguru, ubwo burenganzira ntibureba umugabane wa Bagenzi Théogène ku mutungo uburanwa.

e. Umwanzuro ku birebana n'ingaruka (conséquences) zo kuba umutungo wagurishijwe wari uhuriweho n'abazungura ba Bagenzi Jean

[24] La vente d'un immeuble indivis faite par un seul des indivisaires est valable pour la portion indivise qui lui appartient; Cass. Civ. 3ème, 12 Mai 2010, nº 08-17.186, Bull. Civ. II, nº 95.

[25]La cession d'un bien indivis par un indivisaire seul est opposable aux indivisaires à concurrence de la quote-part de son auteur; Guy Venandet, Pascal Ancel, Xavier Henry, Alice Tisserand-Martin, Georges Wiederkehr, Pascal Guiomard, Code Civil, 115 ème édition, Dalloz, 2016, p. 1104.

[26] Les actes de disposition conclus en violation de la règle de l'unanimité sont opposables aux indivisaires non consentants à hauteur de la quote-part détenue dans l'indivision par l'indivisaire consentant et inopposables pour le surplus; François Terre, Yves Lequette, na Sophie Gaudemet, Droit Civil, Les successions et les libéralités, 4 ème édition, Dalloz, 2014, p. 754.

[27] Tout acte de disposition portant sur un bien indivis (ou……), est soumis à l'unanimité; accompli sans le consentement de tous les indivisaires, il est donc irrégulier; il n'est pas pour autant nul; il est inopposable aux autres indivisaires pendant la durée de l'indivision. Cette inopposabilité porte sur la quote part des autres indivisaires; Philippe Malaurie, Droit Civil, Les successions et les libéralités, 2 ème édition, Defrenois, 2006, P. 388.

[28] Une action en revendication de la propriété indivise et en contestation d'actes conclus sans le consentement des indivisaires a pour objet la conservation des droits de ceux-ci. Elle entre dans la catégorie des actes conservatoires que chacun d'eux peut accomplir seul; Cour de Cassation, civile, Chambre civile 3, 24 octobre 2019, 18-20.068, Bicc nº918 du 15 mars 2020 et Legifrance.

[87] Urukiko rusanga uru rubanza rutangira mu rwego rwa mbere, abavugaga ko aribo bazungura ba Bagenzi Jean ari batatu, aribo Bagenzi Théogène, Mukarushakiro Gloriose na Mukangenzi Céline. Uyu yaje kuvanwa mu rubanza kubera kujurira akarerewe, ariko bigaragara mu nyandikomvugo yo kurangiza urubanza ko yasinye nk'umwe mu bazungura basubijwe umutungo uburanwa. Bivuga rero ko igipande cy'umugabane wa Bagenzi Théogène gihwanye na 1/3 cy'umutungo uburanwa hashingiwe ku ngingo ya 54 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impanon'izungura iteganya ko abana amategeko mbonezamubano yemera ko ariab'uwapfuye bazungura ku buryo bungana nta vangura hagati y'umwanaw'umuhungu n'uw'umukobwa.

[88] Urukiko rurasanga rero, amasezerano y'ubugure yabaye hagati ya Bagenzi Théogène na Gahire Athanase, afite agaciro ku bireba gusa 1/3 cy'umutungo uburanwa, naho 2/3 byawo bikaba bigomba gusubizwa abandi bazungura ba Bagenzi Jean hagendewe ku kirego cyatanzwe na Mukarushakiro Gloriose.

[89] Hashingiwe ku bimaze kuvugwa mu gika kibanza, Urukiko rusanga Gahire Athanase agomba gusubirana 1/3 gihwanye n'umugabane wa Bagenzi Théogène, naho 2/3 bihwanye n'umugabane w'abandi bazungura bikagumanwa n'uwaguze umutungo igihe cyo kurangiza urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane. Kugira ngo ibi bishobore gushyirwa mu bikorwa, Urukiko rusanga inzu iburanwa igomba kugurishwa, Gahire Athanase na Higiro James buri wese akabona amafaranga afiteho uburenganzira, ni ukuvuga 1/3 kuri GAHIRE Athanase na 2/3 kuri Higiro James, habanje kuvanwamo amafaranga yahabwa Higiro James ahwanye n'agaciro k'ibyo yongeye ku mutungo kangana na 6.721.906 Frw kagaragajwe n'umuhanga washyizweho n'uru Rukiko.

[90] Urukiko rusanga kandi Gahire Athanase agomba gusubiza Bagenzi Théogène 1/3 cy'amafaranga we na Mukarushakiro Gloriose bamwishyuye igihe yabasubizaga umutungo harangizwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, ni ukuvuga 1/3 cya 112.823.319 Frw (akubiyemo 107.823.319 Frw y'agaciro k'ibyo yongeye ku nzu na 5.000.000 Frw y'ikiguzi cy'ikibanza), bihwanye na 37.607.773 Frw.

[91] Urukiko rusanga Bagenzi Théogène nawe agomba gusubiza Higiro James 1/3 cy'amafaranga 220.000.000 uyu yishyuye agura umutungo igihe harangizwaga urubanza rwasabiwe gusubirwamo ku mpamvu y'akarengane, ni ukuvuga 73.333.333 Frw, haherewe kuyo Gahire Athanase azasubiza Bagenzi Théogène.

[92] Urukiko rusanga igihe cyose urubanza rutararangizwa, ntacyabuza ko Gahire Athanase na Higiro James bakumvikana umwe akagurira undi igice cy'umutungo afiteho uburenganzira kugira ngo agumane umutungo wose.

5. Indishyi zinyuranye zasabwe n'ababuranyi

[93] Gahire Athanase avuga ko amaze kuburana urubanza yakoresheje abanyamategeko batandukanye, ubu akaba yararusubirishijemo ku mpamvu z'akarengane, bityo akaba asaba indishyi zikurikira:

- Gusubizwa 30.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuva urubanza rutangiye, na 10.000.000 Frw zihwanye n'akazi yagombaga gukora yatakaje.
- Gusubizwa na Higiro James amafaranga y'ubukode kuva mu kwezi k'Ukuboza kugeza urubanza rusomwe, habazwe 3.000.000 Frw ku kwezi, hagakubwa n'amezi ashize abaregwa bakira amafaranga ava mu miryango umunani ikodeshwa. Avuga ko guhera ku wa 15/12/2018 kugeza igihe urubanza rwagombaga gusomerwa ku wa 26/06/2020 hashize amezi 18, yose hamwe akaba ari 3.000.000x18=54.000.000 Frw. Avuga ko ayo mafaranga ayashingira ku masezerano y'ubukode ari muri dosiye.

[94] Bagenzi Théogène na Mukarushakiro Gloriose bavuga ko indishyi Gahire Athanase asaba nta shingiro zifite, kuko ariwe wakoze uburiganya akaba anakomeje gushora abaregwa mu manza z'amaherere. Bavuga ko ahubwo ibikorwa bya Gahire Athanase byo gukomeza kubashora mu manza

z'amaherere, byatumye bakoresha umutungo wabo mu gukurikirana urubanza, bibatwara n'umwanya, bakaba basaba Urukiko kumutegeka kubasubiza amafaranga bakoresheje. Basaba 25.000.000 Frw y'indishyi z'akababaro, 10.000.000 Frw y'ikurikiranarubanza na 4.500.000 Frw y'igihembo cyahawe Abavoka.Bakomeza bavuga ko indishyi zirebana n'igihembo cy'Avoka ababuranira Gahire Athanase basaba zinyuranye n'ibiteganyijwe n'itegeko rishyiraho ibihembo by'Abavoka mu Rukiko rw'Ikirenga.

[95] Higiro James n'abamwunganira bavuga ko amafaranga y'ubukode asabwa nta shingiro afite, kuko urubanza rwaciwe n'Urukiko rw'Ikirenga rwabaye itegeko rurangizwa ku neza. Higiro James we akaba yaraje nk'umuguzi, ubugure bukaba bwarabaye mbere y'uko ibaruwa isubiza Gahire Athanase ko habaye akarengane iboneka. Bavuga ko amafaranga Urukiko rwategetse guha Gahire Athanase angana na 114.000.000 yayahawe, akaba ari kuyabyaza umusaruro, bakaba batumva ikosa Higiro James yakoze ryatuma aryozwa indishyi.

[96] Ku birebana n'igihembo cy'Avoka, bavuga ko abunganira Gahire Athanase basaba indishyi ku nzego zose kandi Higiro James atarigeze aburana izo manza. Muri uru rubanza kandi, ntiyarezwe cyangwa ngo arege, nta n'uwamugobokesheje, yaje kurengera inyungu ze.

[97] Higiro James avuga ko kubera ko Gahire Athanase yamushoye mu manza z'amaherere, yamwishyura 15.000.000 Frw y'indishyi z'akababaro, na 5.000.000 Frw y'igihembo cy'Avoka.

[98] Gahire Athanase n'abamwunganira bavuga ko indishyi Higiro James asaba batazemera, kuko ariwe wizanye mu rubanza arugobotsemo ku bushake, kandi n'amazu akaba ariwe uyafite, ayishyuza, bikaba ari n'ubushake bwe gushaka Abavoka. Bavuga kandi ko indishyi basaba zimureba kuko yagize uruhare muri uru rubanza, ndetse no kuba rwararangijwe mu buryo bunyuranyije n'amategeko akaba ariwe wari ubiri inyuma.

UKO URUKIKO RUBIBONA

[99] Urukiko rurasanga indishyi Gahire Athanase asaba atazihabwa kuko hari ibyo yatsindiwe mu rubanza. Rurasanga kandi amafaranga yavuye mu bukode bw'inzu iburanwa asaba kwishyurwa na Higiro James atayahabwa, kuko uyu yari yabonye iyo nzu mu buryo bukurikije amategeko, akaba yarayikodeshaga yose nk'umutungo we. Ikindi kandi, amafaranga Gahire Athanase agomba gusubiza Bagenzi Théogène, muyo yishyuwe harangizwa urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, nawe yayabyaje umusaruro adasabwa gusubiza.

[100] Urukiko rurasanga nta ndishyi Bagenzi Théogène yahabwa kuko ntacyo yatsindiye mu rubanza, ahubwo akaba atsindiwe ibyo yari yabonye mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane.

[101] Urukiko rurasanga indishyi z'akababaro zisabwa na Mukarushakiro Gloriose atazihabwa kuko atariwe wasabye ko urubanza rusubirwamo ku mpamvu z'akarengane[29]. Rurasanga ariko yagenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko byabaye ngombwa gushaka abamwunganira, bagakurikirana n'urubanza. Icyakora, kubera ko amafaranga asaba ari menshi kandi akaba atayatangira ibisobanuro, akaba agenewe mu bushishozi bw'Urukiko 500.000 Frw y'igihembo cya Avoka, na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw. Urukiko rurasanga kandi ayo mafaranga agomba gutangwa na Gahire Athanase hamwe na Bagenzi Théogène bagize ibyo batsindirwa mu rubanza, buri wese agatanga kimwe cya kabiri cyayo, ni ukuvuga 400.000 Frw.

[102] Urukiko rurasanga indishyi z'akababaro zisabwa na Higiro James atazihabwa kuko adasobanura ishingiro ryazo. Rurasanga icyo yagenerwa ari igihembo cya Avoka yasabye, ariko kuko amafaranga yasabye ari menshi kandi atayatangira ibisobanuro, rukaba rumugeneye mu bushishozi bwarwo 500.000

[29] Reba urubanza RS/INJUST/RCOM 00005/2018/SC rwaciwe ku wa 12/06/2020, haburana PRIME Insurance Ltd na Kansiime James; urubanza RS/INJUST/RCOM 00002/2020/SC rwo ku wa 25/09/2020 haburana Road Solutions Pavement Products na MAILCO Ltd, n'izindi.

Frw. Ayo mafaranga agomba gutangwa na Gahire Athanase hamwe na Bagenzi Théogène, buri wese agatanga 250.000 Frw.

III. ICYEMEZO CY'URUKIKO

[103] Rwemeje ko ikirego rwashyikirijwe na Gahire Athanase cyo gusubirishamo ku mpamvu z'akarengane urubanza RCAA 0002/15/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 15/12/2017, gifite ishingiro kuri bimwe.

[104] Rwemeje ko urubanza RCAA 0002/15/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 15/12/2017, ruhindutse kuri bimwe.

[105] Rwemeje ko umutungo uburanwa Bagenzi Théogène yagurishije Gahire Athanase, wari uw'abazungura ba Bagenzi Jean.

[106] Rwemeje ko amasezerano y'ubugure yakozwe na Bagenzi Théogène afite agaciro ku bireba gusa igipande kigize umugabane we, gihwanye na 1/3 cy'umutungo uburanwa, naho 2/3 byawo bikaba bigomba gusubizwa abandi bazungura ba Bagenzi Jean.

[107] Rwemeje ko Gahire Athanase afite uburenganzira kuri 1/3 cy'umutungo uburanwa, gihwanye n'umugabane wa Bagenzi Théogène.

[108] Rwemeje ko Higiro James afite uburenganzira kuri 2/3 by'uwo mutungo, bihwanye n'umugabane w'abandi bazungura ba Bagenzi Jean.

[109] Rutegetse ko umutungo uburanwa ugurishwa, Gahire Athanase na Higiro James buri wese akabona amafaranga afiteho uburenganzira, ni ukuvuga 1/3 kuri Gahire Athanase na 2/3 kuri Higiro James, habanje kuvanwamo amafaranga agomba guhabwa Higiro James ahwanye n'agaciro k'ibyo yongeye ku mutungo kangana na 6.721.906 Frw.

[110] Rutegetse Gahire Athanase gusubiza Bagenzi Théogène 1/3 cy'amafaranga we na Mukarushakiro Gloriose bamwishyuye igihe yabasubizaga umutungo, ni ukuvuga 1/3 cya 112.823.319 Frw, bihwanye na 37.607.773 Frw.

[111] Rutegetse Bagenzi Théogène gusubiza Higiro James 1/3 cy'amafaranga 220.000.000, ni ukuvuga 73.333.333 Frw, haherewe kuri 37.607.773 Frw Gahire Athanase agomba gusubiza Bagenzi Théogène.

[112] Ruvuze ko igihe cyose urubanza rutararangizwa, ntakibuza ko Gahire Athanase na Higiro James bakumvikana, umwe akaba yagurira undi igice cy'umutungo afiteho uburenganzira kugirango agumane umutungo wose.

[113] Rutegetse Gahire Athanase na Bagenzi Théogène gufatanya kwishyura Mukarushakiro Gloriose 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, buri wese akishyura 400.000 Frw.

[114] Rutegetse Gahire Athanase na Bagenzi Théogène gufatanya kwishyura Higiro James 500.000 Frw y'igihembo cya Avoka, buri wese akishyura 250.000 Frw.

[115] Rutegetse Bagenzi Théogène kwishyura 127.250 Frw agenewe umuhanga mu igenagaciro Gatsirombo Egide.