UWIMANA v KAGITARE

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00002/2018/SC (Mukamulisa, P.J, Nyirinkwaya, Cyanzayire, Rukundakuvuga na Hitiyaremye, J.) 21 Gashyantare 2020]

Amategeko agenga umuryango – Ubutane – Kugabana imitungo kubashyingiranywe igihe cy'ubutane – Urubanza rw'Ubutane rusesa uburyo bw'imicungire y'ivangamutungo y'abashyingiranywe, bakagabana mu buryo bungana imitungo yabo cyangwa mu bundi buryo bumvikanyeho; mu gihe hari imitungo bari basangiye itaragaragajwe igihe cy'ubutane, nta kibuza ko ubifitemo inyungu ayiregera igihe imenyekaniye, kugira ngo nayo igabanwe.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kirehe harega Uwimana arega Kagitare aho yamuregaga ishyamba riri kubutaka bwa ha3.6, avuga ko ari ubutaka bwe n'umugabo we bari barasezeranye witwa Mwumvaneza ariko bakaba bari barahawe ubutane binyuza mu rubanza rwabereye muri Amerique kuko ariho bari baragiye gutura. Ubwo bahabwaga ubutane ntabwo uwo mutungo washyizwe muyo bagombaga kugabana ariko Urukiko ruvuga ko hagize undi mutungo ugaragara bashobora kuwuregera bakawugabana, ibi akaba aribyo Uwimana yakoze kuko uwo mutungo wari warigaruriwe na Kagitare wari umugore wa Mukuru wa Mwumvaneza. Mu rubanza Kagitare yatanze inzitizi agaragaza ko Uwimana nta bubasha afite bwo kuregera umutungo wa Mwumvaneza kuko batandukanye akaba atakiri umugore we, Urukiko rwafashe icyemezo rugaragaza ko urubanza rw'ubutane yagaragaje ko batanye rukaba rutari bwemezwe mu Rwanda bityo ko rutagushyingirwaho hafatwa icyemezo ko ikirego cya Uwimana yatanze gifite ishingiro ko ishyamba yaregeye ari irye afatanije Mwumvaneza.

Kagitare yajuririye Urukiko rw'Isumbuye rwa Ngoma, agaragaza ko inzitizi yatanze y'uko Uwimana ntabubasha afite bwo gutanga ikirego, Urukiko rutayihaye agaciro. Urukiko rw'Isumbuye rwafashe icyemezo ko ubujurire bwe ntashingiro bufite hagumyeye imikirize yo mu Rukiko rw'Ibanze.

Kagitare yaje kongera gutanga ikirego asaba ko urubanza rw'ubutane rwaciwe n'urukiko rwo muri America rwarangirizwa mu Rwanda, Urukiko Rukuru rwemeje ko urwo rubanza rufite agaciro ko rwarangirizwa mu Rwanda. Kagitare yaje gusubirishamo urubanza rwo mu Rukiko rw'Isumbuye ingingo shya akoresheje rwa rubanza rwemejwe n'Urukiko Rukuru, Urukiko rw'Isumbuye rufata icyemezo ruvanaho Urubanza rwo Mu Rukiko rw'Ibanze n'Urwo mu Rukiko rw'Isumbuye rwasubirishijwemo ingingo nshya kubera ko Uwimana bigaragara ko yatanye na Mwumvaneza bityo ntabubasha afite bwo kuregera umutungo wa Mwumvaneza.

Uwimana ntiyishimiye Imikirize maze yandikira Umuvunyi Mukuru asaba ko urwo rubanza rusubirishwamo ku mpamvu z'akarengane. Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga amugaragariza akarengane kari mu rubanza asaba ko rwasubirwamu ku mpamvu z'akarengane.

Urukiko rw'Ikirenga rwaburanishije urubanza rusuzuma ikibazo cyo kumenya niba Uwimana ashobora gukurikirana umutungo yarasangiye na Mwumvaneza kugira ngo bawugabane nyuma y'urubanza rw'ubutane. Uhagarariye Uwimana yavuze ko impamvu basubirishijemo urubanza ku mpamvu y'akarengane ari uko Urukiko rwemeje ko atemerewe gukurikirana imitungo ya Mwumvaneza kubera ko batandukanye kandi icyo yaregeraga kwari ukwemeza ko ishyamba aregera barifatanije kuko yari yahakanye mu rubanza rw'ubutane ko nta mutungo bafitanye mu Rwanda, avuga kandi ko kuba harabayeho urubanza rw'ubutane bidakuraho kuba afite uburenganzira ku mitungo yahoze asangiye na Mwumvaneza ko icyo aburana Atari ukugira ngo ishyamba ribe irye ahubwo icyo asaba ari uko rijya mu mutungo bagomba kugabana.

Uhagarariye Kagitare avuga ko urubanza rw'ubutane rutigeze ruvuga ko nibigaragara ko hari imitungo bahishe bazayigabana, kuko ibyo bari bafite babigabanye muri urwo rubanza.

Incamake y'icyemezo: 1. Urubanza rw'Ubutane rusesa uburyo bw'imicungire y'ivangamutungo y'abashyingiranywe, bakagabana mu buryo bungana imitungo yabo cyangwa mu bundi buryo bumvikanyeho; mu gihe hari imitungo bari basangiye itaragaragajwe igihe cy'ubutane, nta kibuza ko ubifitemo inyungu ayiregera igihe imenyekaniye, kugira ngo nayo igabanwe, bityo Uwimana akaba yarafite uburenganira bwo kuregera ishyamba ritagaragajwe mu mitungo bagombaga kugabana igihe cy'ubutane kugira ngo rize mu mutungo bagomba kugabana.

2. Kuba hari ibimenyetso bidashidikanywaho bigaragaza ko ishyamba riburanwa ari irya Mwumvaneza afatanije na Uwimana, iryo shyamba rigomba kugaruka mu mutungo wabo bari basangiye kugira barigabane.

Gusubirishamo ku mpamvu z'akarengane bifite ishingiro.
Imikirie y'urubanza rwasabiwe gusubirishwamo ihindutse kuri byose.

Amategeko yashingiweho:
Itegeko N º 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 6 al 1na2
Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 8
Itegeko Nº 15/2004 ryo ku wa 19/07/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uwimana Marine yashyingiranywe mu buryo bw'ivangamutungo risesuye na Mwumvaneza Justin mu mwaka wa 1990, mu cyahoze ari Komini Rusumo. Nyuma ya 1994 baje kujya kuba muri Leta Zunze Ubumwe za Amerika, ariko baza kuburana urubanza rw'ubutane rwanabagabanyije imitungo, rufite nomero 2009-54209, rwaciwe na District Court ya Harris County, Texas, ku wa 11/06/2010.

[2] Kubera ko Uwimana Marine yavugaga ko hari undi mutungo uri mu Rwanda batagabanyijwe, yaje kuwureba, ukaba ugizwe n'ishyamba riri ku butaka bwa 3,6 ha mu Murenge wa Musaza, mu Karere ka Kirehe. Yasanze Kagitare Dancille, umugore wa Mutabazi mukuru wa Mwumvaneza Justin, ariwe ufite uwo mutungo. Byatumye atanga ikirego mu Rukiko rw'Ibanze rwa Kirehe, asaba kwemeza ko uwo mutungo ari uwe na Mwumvaneza Mparirwa Justin, maze Kagitare Dancille agobokeshwa muri urwo rubanza.

[3] Kagitare Dancille yatanze inzitizi avuga ko Uwimana Marine adafite ububasha bwo kuregera umutungo yiyita umugore wa Mwumvaneza Justin, kandi baramaze guhabwa ubutane mu gihugu babamo, ariko iyo nzitizi Urukiko ntirwayiha ishingiro, rushingiye ku kuba urubanza rw'ubutane rutarigeze rukorerwa *exequatur* mu nkiko z'u Rwanda. Ku wa 31/01/2011, Urukiko rw'Ibanze rwa Kirehe rwaciye urubanza RC 0576/10/TB/KRH, rwemeza ko ikirego cya Uwimana Marine gifite

ishingiro, ko ishyamba riri ku butaka bungana na 3,6 ha, buherereye mu Murenge wa Musaza ari irya Mwumvaneza Mparirwa Justin na Uwimana Marine.

[4] Kagitare Dancille yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Ngoma, avuga ko Urukiko rw'Ibanze rutahaye agaciro inzitizi yatanze yo kuba Uwimana Marine adafite ububasha bwo kuregera umutungo yiyita umugore wa Mwumvaneza kandi baramaze gutana. Ku wa 20/10/2011, Urukiko Rwisumbuye rwa Ngoma rwaciye urubanza No RCA 0048/11/TGI/NGOMA, rwemeza ko ubujurire bwa Kagitare Dancille budafite ishingiro, rwemeza ko hagumyeho urubanza RC 0576/10/TB/KRH.

[5] Urukiko Rwisumbuye rwa Ngoma rwafashe icyemezo rushingiye ku kuba Kagitare Dancille atarabashije kugaragaza ikimenyetso cy'uko Uwimana Marine yatandukanye na Mwumvaneza Justin, kuko urubanza rw'ubutane rwaciriwe muri Leta Zunze Ubumwe za Amerika yari yatanzeho ikimenyetso rutari rwakorewe “exequatur” ngo Urukiko Rukuru rutegeke ko rurangirizwa mu Rwanda.

[6] 6. Kagitare Dancille yatanze ikirego mu Rukiko Rukuru, Urugereko rwa Rwamagana, asaba ko urubanza 2009-54209 rwaciwe na District Court, ku wa 11/06/2010, rurangirizwa mu Rwanda. Urukiko Rukuru, Urugereko rwa Rwamagana, rwaciye urubanza ku wa 18/07/2013, rwemeza ko urubanza Nº 2009-54209 rufite agaciro ko kurangirizwa mu Rwanda. Kagitare Dancille yarushingiyeho nk’ikimenyetso gishya, asubirishamo ingingo nshya urubanza No RCA 0048/11/TGI/NGOMA rwaciwe ku wa 20/10/2011.

[7] Ku wa 27/02/2014, Urukiko Rwisumbuye rwa Ngoma rwaciye urubanza Nº RCA 0334/13/TGI/NGOMA, rwemeza ko ikirego cyo gusubirishamo urubanza ingingo nshya cyatanzwe na Kagitare Dancille gifite ishingiro, rwemeza ko urubanza Nº RCA0048/11/TGI/NGOMA rwaciwe n’Urukiko Rwisumbuye rwa Ngoma ku wa 20/10/2011 n’urubanza Nº RC 0576/10/TB/KRH rwaciwe n’Urukiko rw’ibanze rwa Kirehe ku wa 31/01/2011 zivanyweho. Urukiko Rwisumbuye rwa Ngoma rwashingiye ku kuba Uwimana Marine yaraburanye izo manza adafite ububasha, kuko atari akiri umugore wa Mwumvaneza Justin.

[8] Ku wa 31/05/2016, Uwimana Marine yashyikirije ikibazo Urwego rw’Umuvunyi avuga ko yarenganye, nyuma yo gusesengura ikibazo cye rwandikira Perezida w’Urukiko rw’Ikirenga rusaba ko urubanza RCA 0334/13/TGI/NGOMA rusubirishwamo ku mpamvu z’akarengane.

[9] Perezida w’Urukiko rw’Ikirenga, mu cyemezo cyo ku wa 07/02/2018, yemeje ko ikirego gisubirishamo ku mpamvu z’akarengane urubanza RCA0334/13/TGI/NGOMA cyandikwa mu bitabo by’Urukiko kugirango ruzongere ruburanishwe. Ikirego cyaranditswe, gihabwa No RS/INJUST/RC 00002/2018/SC.

[10] Me Intwazayamugabo Armand uburanira Kagitare Dancille yatanze inzitizi yo kutakira ikirego, avuga ko Uwimana Marine adafite ububasha bwo kurega, ashingiye ku mpamvu zikurikira:

a. kuba umwirondoro we ushidikanywaho, kuko hari aho ku izina rye yongeraho Mukamana, kandi akaba yarahinduye amazina ya Mwumvaneza Justin akamwita Mparirwa, mu gihe “passeport” ye ndetse n'icyemezo cyo gushyingirwa bigaragaza ko ari Mwumvaneza Justin;

b. kuba atagaragaza isano afitanye n’ishyamba aburana, n’iyo afitanye na Mwumvaneza Justin yagakwiye kuba akomoraho inyungu n’ububasha byo kurega;

c. kuba uwitwa Munyana Amina watangije izi manza zose avuga ko yahereye ku butumwa yahawe na Uwimana Marine bwo ku wa 27/10/2010, nabwo bwatanzwe nyuma y’uko urubanza rw’ubutane rubaye

itegeko, akaba yaragombaga gukurikirana no gucunga umutungo wa Uwimana Marine n'umugabo we ungana na are 8,8956, ariko akaba yarahise aregera hegitari 3,6;

d. kuba hari ugushidikanya ku muburanyi Me Niyibizi Diogene ahagarariye, kuko "Assignation" yagaragaje avuga ko yamenyeshejwe itujujwe, ndetse akaba ataramusinyiye nk'umuhagarariye; nyamara Umuhesha w'inkiko akaba yarayishyizeho umukono ku wa 05/02/2018 iki kirego kitaratangwa kuko cyatanzwe ku wa 08/02/2018.

[11] Me Niyibizi Diogène uhagarariye Uwimana Marine yasubije kuri iyo nzitizi avuga ko:

a. imyirondoro y'uwo ahagarariye igaragara neza muri "system", kandi ko isano afitanye n'ikiburanwa ari umugabo we Mwumvaneza Justin, ufite akabyiniriro mu Rwanda ka Mparirwa nk'uko bigaragazwa n'inyandiko yo ku wa 11/08/2010, aho umutangabuhamya yemeje ko ubutaka bwari bwarahawe Mparirwa, Kagitare nawe akabyemera ndetse akabisinyira;

b. urubanza rwo muri Amerika rukomokaho izo manza zose, rwatanze ubutane hagati ya Uwimana Marine na Mwumvaneza Justin, rwemeje ko mu gihe hazagaragara undi mutungo wahishwe n'umwe mu baburanyi, ubifiteho uburenganzira azabiregera;

c. inzitizi itanzwe bwa mbere mu Rukiko rw'Ikirenga, ikaba idakwiye kwakirwa.

[12] Iburanisha ry'urubanza ryashyizwe ku wa 09/10/2019, ribera mu ruhame, Kagitare Dancille yitabye aburanirwa na Me Intwazayamugabo Armand, naho Uwimana Marine aburanirwa na Me Niyibizi Diogene. Mbere y'uko iburanisha ry'urubanza ryinjira mu mizi, Me Intwazayamugabo Armand yamenyesheje Urukiko ko iby'inzitizi bishingiye ku myirondoro y'uwatanze ikirego abiretse, ko nyuma yo kubona ibyangombwa byatanzwe na Uwimana Marine yasanze nta mpamvu ihari yo gukomeza kubitsimbararaho. Yavuze ariko ko agikomeje inzitizi yo kuba Uwimana Marine adafite ububasha bwo kurega, Urukiko rumenyesha ababuranyi ko iyi nzitizi idashobora kwakirwa kuko imanza z'akarengane ziba zaraciwe burundu, bene izi nzitizi zikaba zidashobora kugarukwaho, keretse akarengane gashingiye kuri iyo nzitizi.

[13] Iburanisha ry'urubanza ryakomeje mu mizi, rirapfundikirwa, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 25/10/2019. Mu mwiherero warwo, Urukiko rwasanze mbere y'uko urubanza rucibwa burundu, hari ibigomba kubanza gukorwa byarufasha kwemeza nyiri shyamba riburanwa, birimo gukora iperereza aho ikiburanwa kiri hakabazwa abatangabuhamya, no kumva abakozi b'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda.

[14] Iperereza ryakozwe ku wa 15/01/2020, iburanisha ry'urubanza risubukurwa ku wa 04/02/2020, ababuranyi bose bahari, hitabye kandi Mukunzi Emmanuel, umukozi mu Kigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda. Ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku wa 21/02/2020.

[15] Ibibazo by'ingenzi ababuranyi bagiyeho impaka, ari nabyo byasuzumwe muri uru rubanza, ni ukumenya niba nyuma y'urubanza rw'ubutane, Uwimana Marine ashobora gukurikirana umutungo avuga ko yari asangiye na Mwumvaneza Justin ariko ukaba utaravuzwe muri urwo rubanza rw'ubutane, kugira ngo bawugabane. Bagiye impaka kandi ku kibazo cyo kumenya nyiri shyamba riburanwa, Kagitare Dancille akavuga ko ari irye, agashyigikirwa na Mwumvaneza Justin, mu gihe Uwimana Marine avuga ko ryatewe na Mwumvaneza Justin bakaba barisangiye.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. **Kumenya niba Uwimana Marine ashobora gukurikirana umutungo yari asangiye na Mwumvaneza Justin, kugira ngo bawugabane nyuma y'urubanza rw'ubutane.**

[16] 16. Me Niyibizi Diogene uburanira Uwimana Marine avuga ko impamvu yatumye asubirishamo urubanza ku mpamvu z'akarengane ari ukuba Urukiko rwaremeje ko atemerewe kuburana imitungo ya Mwumvaneza Mparirwa Justin ngo kubera ko batandukanye, kandi icyo yasabaga ari ukwemeza ko ishyamba riri ku butaka bungana na 3.6 ha barifatanyije, akaba yaratanze ikirego kubera ko mu rubanza rw'ubutane Mwumvaneza Mparirwa Justin yari yahakanye ko nta mitungo bafite mu Rwanda.

[17] 17. Avuga ko kuba harabayeho urubanza rw'ubutane bidakuraho kuba afite uburenganzira ku mitungo yahoze asangiye na Mwumvaneza Mparirwa Justin mbere y'uko batandukana, kuko afite uburenganzira bwo kugabana n'uwahoze ari umugabo we umutungo byaba bigaragaye ko bahoze basangiye, nk'uko ingingo ya 24 y'Itegeko No 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura (ryakoreshwaga ubwo urubanza rusabirwa gusubirwamo rwaburanishwaga) yabiteganyaga.

[18] Avuga kandi ko Uwimana Marine ataburana kugira ngo ishyamba ryitwe irye, ko icyo asaba ari uko rijya mu mutungo agomba kugabana na Mwumvaneza Justin, urubanza rw'ubutane rero rukaba rutagomba kumwambura uburenganzira bwo gukurikirana umutungo yari asangiye na Mwumvaneza Justin kuko kugabana umutungo biba nyuma y'uko abashakanye bamaze gutandukana.

[19] Me Intwazayamugabo Armand avuga ko urubanza rw'ubutane rutigeze ruvuga ko nibigaragara ko hari imitungo bahishe bazayigabana, kuko ibyo bari bafite babigabanye muri urwo rubanza.

UKO URUKIKO RUBIBONA

[20] 20. Ingingo ya 6, igika cya 1 n'icya 2, by'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango nk'uko ryahinduwe kandi ryujujwe kugeza ubu, igira iti: "Imimerere n'ubushobozi by'Abanyarwanda, baba ababa mu Rwanda n'ababa mu mahanga, bigengwa n'amategeko y'u Rwanda. Icyakora, umunyarwanda utuye mu mahanga ufite ubwenegihugu burenze bumwe ashobora kugengwa n'itegeko yihitiyemo ryaba iry'u Rwanda cyangwa iry'igihugu kindi abereye umwenegihugu".

[21] Hashingiwe kuri iyi ngingo, umunyarwanda ufite ubundi bwenegihugu ashobora kugengwa n'amategeko y'igihugu abamo cyangwa n'amategeko y'u Rwanda bitewe n'icyo yahisemo.

[22] Uwimana Marine ni umunyarwanda ufite n'ubwenegihugu bw'Amerika, akaba ashobora kugengwa n'amategeko y'Amerika cyangwa y'u Rwanda. Yatanze ikirego mu nkiko z'u Rwanda, ashingiye ku mategeko y'u Rwanda, asaba kwemeza ko hari umutungo yari asangiye na Mwumvaneza Justin utarashyizwe mu byo bagabanye igihe cy'ubutane, kugira ngo nawo bawugabane.

[23] 23. Ingingo ya 8 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, iteganya ko "iyo uburyo bw'ivangamutungo rusange busheshwe ku mpamvu z'ubutane cyangwa guhindura uburyo bw'imicungire y'umutungo, abari barashyingiranywe kuvanga umutungo bagabana ku buryo bungana cyangwa mu bundi buryo bumvikanye imitungo n'imyenda…"

[24] Iyi ngingo yumvikanisha ko iyo habaye urubanza rw'ubutane ku bashyingiranywe, uburyo bw'ivangamutungo basezeranye buba busheshwe, bakagabana mu buryo bungana cyangwa mu bundi buryo bumvikanyeho imitungo. Urubanza rw'ubutane nirwo runagaragaza uburyo abari

barashyingiranywe bagabana umutungo bari basangiye, ariko mu gihe hari imitungo itaragaragajwe igihe cy'urwo rubanza, nta kibuza ko igihe imenyekaniye, ubifitemo inyungu yabiregera Urukiko kugira ngo nayo igabanwe. Bitabaye bityo, uwo mutungo wakwiharirwa n'umwe mu bari barashyingiranywe, bikaba binyuranye n'ibiteganywa mu ngingo ya 8 y'Itegeko No 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru.

[25] Urubanza 2009- 54209 rwaciwe ku wa 11/06/ 2010 na '*'District Court*" ya "*Harris County*" Texas, muri Leta Zunze Ubumwe z'Amerika, rwemeje ubutane hagati ya Uwimana Marine na Mwumvaneza Justin, rugena n'uburyo imitungo bari basangiye izagabanwa. Mu gihe ariko haba hari indi mitungo itaravuzwe igihe urubanza rwacibwaga, ikagaragara nyuma, nta kibuza ko ubifitemo inyungu yasaba ko nayo igabanywa nk'uko byasobanuwe haruguru.

[26] Hashingiwe ku bisobanuro bimaze gutangwa, no ku ngingo z'amategeko zavuzwe haruguru, Urukiko rurasanga Uwimana Marine ashobora gukurikirana umutungo yari asangiye na Mwumvaneza Justin, kugira ngo bawugabane nyuma y'urubanza rw'ubutane.

b. Kumenya nyir'ishyamba riburanwa

[27] Me Niyibizi Diogene uburanira Uwimana Marine avuga ko hari ibimenyetso bidashidikanywaho byerekana ko umutungo uburanwa ugizwe n'ishyamba ari uwa Mwumvaneza Mparirwa Justin na Uwimana Marine, ibyo bimenyetso bikaba ari ibi bikurikira:

a. Icyangombwa cy'ubutaka cyerekana ko ishyamba ribaruye kuri UPI 5/05/08/05/2529 ari iryabo;

b. Kitansi zakiriweho amafaranga yo kwandikisha ubutaka hamwe n'icyemezo cy'agateganyo cy'uwabaruriwe ubutaka kijyanye n'ikindi gice cy'ubutaka bubaruye kuri nimero 1200. Icyo cyemezo kigaragaza ko amazina y'utunze ubutaka ari Mparirwa Justin na Uwimana Marine, icyangombwa cya burundu kikaba kitaraboneka kubera amakimbirane;

c. Inyandikomvugo y'inama yabaye ku wa 17/12/2010, aho Kagitare Dancille yavuze ko ubutaka ari ubwa Mparirwa Justin.

[28] Avuga ko ubutaka bwose buburanwa bungana na 3.6 ha, bukaba butarigeze busaranganywa. Asobanura ko haba mu Rukiko rw'Ibanze rwa Kirehe, haba no mu Rukiko Rwisumbuye rwa Ngoma, Kagitare Dancille yavugaga ko ubwo butaka ari ubwe, kugera hakorwa inama nteguraurubanza; mu iburanisha akaba aribwo bwa mbere avuze ko ubutaka bwa Mwumvaneza Justin bwasaranganyijwe uwitwa Bendantunguka Augustin.

[29] Avuga kandi ko icyiswe ubuhamya bwa Bendantunguka Augustin kidakwiye guhabwa agaciro kuko atari inyandikomvugo y'isaranganya, akaba ataranigeze atambamira ko ibyangombwa byandikwa kuri Mwumvaneza Mparirwa Justin.

[30] Ku bijyanye n'uko ubutaka bwabaruwe kuri Kagitare Dancille, nyuma bagasiba izina rye bakandikaho Mwumvaneza Justin na Uwimana Marine, asobanura ko Kagitare Dancille yabanje kwandikisha ishyamba riburanwa, nyuma abaturage bagatanga amakuru ko ubutaka atari ubwe ahubwo ari ubwa Mwumvaneza Mparirwa Justin, bituma Ikigo cy'ubutaka gisiba izina rye cyandikaho Mparirwa Justin.

[31] Yongeraho ko icyangombwa cyasohotse Uwimana Marine na Mwumvaneza Mparirwa Justin badahari, akaba ariyo mpamvu mu kugisinya handitswe P.O, gusa akaba atazi uwasinyeho iyo P.O mu

mwanya wa Mparirwa Justin. Ku bijyanye n'amafaranga 1200 yatangwaga mu ibarura, avuga ko yatanzwe na Kagitare Dancille, ariko akaba yarayasubijwe.

[32] Me Niyibizi Diogene asoza avuga ko mu kwemeza nyir'ishyamba riburanwa, Urukiko rukwiye gushingira ku ngingo ya 65[1] n'ingingo ya 71[2] z'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, rugashingira ku byavuye mu iperereza ndetse n'ubuhamya bwatanzwe na Mukunzi Emmanuel.

[33] Me Intwazayamugabo Armand avuga ko ishyamba riburanwa ari irya Kagitare Dancille ashingiye ku mpamvu zikurikira:

a. Ishyamba ryari irya Mwumvaneza Justin ryahawe Bendantunguka Augustin mu isaranganya, nk'uko bigaragara mu buhamya yatanze, rikaba ntaho rihuriye n'irya Kagitare Dancille;

b. Icyemezo cy'agateganyo cyo kubaruza ubutaka cyanditse kuri Kagitare Dancille, ariko mu buryo bw'uburiganya izina rye rikaba ryaranyujijwemo ikaramu bakandikaho Mwumvaneza Justin;

c. Mwumvaneza Justin bavuga ko yabaruje, ibarura ryabaye ari muri Amerika, ndetse anivugira ko umutungo yari afite wasaranganyijwe, ko nta mutungo afite mu Rwanda;

d. Icyangombwa cy'ubutaka cyasinyweho « P.O » mu buryo bw'uburiganya, kikaba cyarahimbwe;

e. Inama bivugwa ko Kagitare Dancille yavugiyemo ko ishyamba atari irye ntayemera, kuko atigeze asinya ku nyandikomvugo yayo, bityo ibyayivugiwemo bikaba bitagomba kumwitirirwa;

f. Ibyavuzwe ko hari amafaranga 1200 yasubijwe Kagitare Dancille sibyo, kuko iyo havukaga ikibazo cyo guhindura uwanditse ku cyangombwa byakorerwaga raporo, kuba iyo raporo idahari bikaba ari ikimenyetso cy'uko Kagitare Dancille yasibwe ku byangombwa ku buryo bw'uburiganya.

[34] Mukunzi Emmanuel watumiwe n'Urukiko kugira ngo agire amakuru arugezaho ajyanye n'amasezerano y'ubukode burambye Nº 2529/KIR/MUS yo ku wa 01/09/2011, yabwiye Urukiko ko icyangombwa ariwe wagisinye koko ashingiye ku makuru yavuye mu ibarura ry'ubutaka. Ku bijyanye n'uwasinyeho « PO », avuga ko ibyangombwa byatangwaga ari byinshi, kandi ko iyo bamaraga kubisinya byoherezwaga mu Kagari akaba ariho bitangirwa, akaba rero adashobora kumenya uwasinyiye ko agihawe.

UKO URUKIKO RUBIBONA

[35] 35. Uwimana Marine yemeza ko ishyamba riburanwa ari irya Mwumvaneza Justin, bakaba bari barisangiye kubera ko bari barasezeranye mu buryo bw'ivangamutungo risesuye. Ibimenyetso by'ingenzi ashingiraho bigizwe n'ibi bikurikira:

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[1] Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira.

[2] Abatangabuhamya bose batuma urubanza rucibwa neza bavuga icyo baruziho. Ntabwo urukiko rushobora kubuza umutangabuhamya w'ingirakamaro kuvuga icyo azi ku rubanza cyangwa se ngo ababuranyi bamwihane. Icyakora ababuranyi bashobora kuvuga impamvu zose zituma batakwizera ko abatangabuhamya babatangira ubuhamya bw'ukuri

a. Raporo y'ikemurwa ry'ikibazo cy'ababuranira umuryango wa Mparirwa[3] na Madamu Kagitare Dancille;

b. Kitansi zakiriweho amafaranga yo kwandikisha ubutaka;

c. Icyemezo cy'agateganyo gihabwa uwabaruriwe ubutaka;

d. Amasezerano y'ubukode burambye N° 2529/KIR/MUS yo ku wa 01/09/2011.

[36] Mu gusuzuma ibimenyetso byatanzwe n'urega, Urukiko rwasanze hagaragara ibi bikurikira:

a. Raporo y'ikemurwa ry'ikibazo cy'ababuranira umuryango wa Mparirwa na Madamu Kagitare Dancille yasinywe na Nkubito Denis wari Umunyamabanga Nshingwabikorwa w'Akagari ka Nganda, igaragaza ko abagabo babajijwe aribo Ngendahimana Védaste na Musonera Casimir bemeje ko ishyamba riburanwa ari irya Mparirwa. Igaragaza kandi ko Kagitare Dancille yavuze ko yemera ko ubutaka buburanwa ari ubwa Mparirwa bakaba barafatanyije gutera ishyamba, ariko nta mukono we ugaragara kuri iyo raporo;

b. Kitansi yakiririwaho amafaranga yo kwandikisha ubutaka igaragaza ko amazina ya Kagitare Dancille yasibwe, hakandikwaho amazina ya Mparirwa Justin;

c. Amasezerano y'ubukode burambye nomero 2529/KIR/MUS yo ku wa 01/09/2011, yanditseho ko ukodesha ubutaka ari Mparirwa Justin na Uwimana Marine, akaba agaragaza ubutaka bufite 1.514 sqm, mu gihe ubutaka bwaregewe bufite hegitari 3,6.

[37] Kubera ibibazo bimaze kuvugwa bigaragara mu nyandiko zatanzweho ibimenyetso, kandi uregwa akaba avuga ko izo nyandiko zitabayeho, ndetse akagaragaza inyandiko yakozwe n'uwitwa Bendantunguka Augustin yemeza ko ishyamba ryahoze ari irya Mwunvaneza Justin yarihawe mu isaranganya, Urukiko rwasanze ari ngombwa gukora iperereza aho ikiburanwa kiri kugira ngo rumenye ukuri ku bivugwa n'ababuranyi. Muri iryo perereza habajijwe abaturiye aho ikiburanwa kiri, kimwe n'abakozi bari bashinzwe kwandika ubutaka basinye ku cyemezo cy'agateganyo gihabwa uwabaruriwe ubutaka, no kuri kitansi yakiririwaho amafaranga yo kwandikisha ubutaka.

[38] Abatangabuhamya bavuze ko ishyamba riburanwa ari irya Mwumvaneza Justin ni aba bakurikira:

a. Umutangabuhamya witwa Ngendahimana Védaste (wari *Responsable* ubwo ishyamba ryaterwaga akaba ari nawe watanze ubutaka ryateweho), yabwiye Urukiko ko Mutabazi (umugabo wa Kagitare Dancille akaba n'umuvandimwe wa Mwumvaneza Justin) yamusabye aho gutera ishyamba akahamuha, nyuma agasabira na murumuna we Mparirwa. Yavuze ko ishyamba ririmo ibice bibiri, ni ukuvuga igice cya Mutabazi n'icya Mparirwa, ariko ko atazi aho bagabanira. Yibukijwe ubuhamya yari yaratanze mbere, bugaragara muri raporo y'ikemurwa ry'ikibazo cy'ababuranira umuryango wa Mparirwa na Madamu Kagitare Dancille, icyo gihe akaba yari yavuze ko yahaye ubutaka Mparirwa, ariko kuko yari umunyeshuri, ibikorwa bye byose bikaba byarakurikiranwaga na mukuru we Mutabazi. Yasubije ko yasabwe ubutaka na Mutabazi ariko abusabira Mparirwa, ko atigeze akurikirana ngo amenye niba mu gutera ishyamba bari bafatanyije;

b. Uwitwa Murambira Eliyazar (ufite ishyamba ryegeranye n'ahaburanwa) yavuze ko Mutabazi wari konseye, yasabye Ngendahimana Védaste gukebera ahantu ho gutera ishyamba murumuna we Mparirwa wari umunyeshuri, nyuma akariteresha akoresheje uwitwa Ntamakiriro;

[3] Mu iperereza ryakozwe n'Urukiko aho ikiburanwa kiri, abaturage bazi ababuranyi bavuze ko Mparirwa ariwe Mwumvaneza Justin. Bavuze ko izina ryavugwaga cyane iwabo ari Mparirwa kuko izina rya Mwumvaneza yarifashe kubera amashuri.

c. Uwitwa Musonera Casimir (ufite ubutaka iruhande rw'ahaburanwa) nawe yabwiye Urukiko ko ahaburanwa ari aha Mparirwa, ko hari n'aho yaguze na mukuru we Kagimbura Gaspard kugirango ahongere;

d. Uwitwa Twagiramungu Fréderic, yavuze ko ariwe watundiraga Mparirwa ingemwe z'inturusu n'imodoka ye, akaziha Ntamakiriro wazitereshaga, nyuma akajya guhembesha Mparirwa aho yigaga i Nyakinama.

e. Urukiko rwanabajije abakozi bari muri komite ishinzwe kwandika ubutaka basinye ku byemezo byavuzwe haruguru, aribo Nyampundu Stéphanie na Niyonsenga Fabien. Nyampundu Stéphanie yabwiye Urukiko ko:

i. Ikibazo cya Mparirwa acyibuka neza;

ii. Kagitare Dancille yari kumwe n'Itsinda ry'abapima (*land surveyor*), bamaze gupima aba ariwe bandika kuri kitansi nka nyir'ubutaka, hanyuma ageze ku biro by'Akagari aho bandikaga mu ikaye bagakora n'icyemezo cy'agateganyo cy'uwabaruriwe ubutaka, atanga andi mafaranga yo kugira ngo bamwandikire icyo cyemezo, nabwo yandikirwa indi kitansi;

iii. Bagiye kumwandikira icyemezo cy'agateganyo cy'uwabaruriwe ubutaka, abaturage barasakuje bavuga ko ubutaka arimo kwiyandikishaho atari ubwe, bituma umunyamategeko witwa Cyatengwa Julienne amusaba kuzana abatangabuhamya bemeza niba ubutaka ari ubwe koko, abo azanye bose bemeza ko ubutaka ari ubwa mparirwa Justin;

iv. Kubera ko kagitare Dancille yari yahawe kitansi 2, umunyamategeko Cyatengwa Julienne yamusabye kuzitanga. Kubera ko amafaranga yari yamaze kwishyurwa, yabagiriye inama yo kutongera kwandika izindi kitansi, ko ahubwo Kagitare Dancille asubizwa amafaranga ye, izina rye rikanyuzwamo umurongo bakandikamo nyiri ubutaka ariwe Mparirwa.

v. Kubera ko icyemezo cy'agateganyo cy'uwabaruriwe ubutaka cyari kitarandikwa, cyo cyanditswe neza hashingiwe ku makuru yari amaze gutangwa;

vi. Impamvu hari kitansi 2, ni uko imwe yabaga ari iy'abatekinisiye bandikiye ku isambu ipimwa, indi ari iya Komite yandikaga amakuru n'ibyangombwa by'agateganyo.

Uwitwa Niyonsenga Fabien nawe wanditse kuri kitansi imwe, yavuze ko ibyo Nyampundu Stéphanie yavuze ariko byagenze, ntacyo yabeshyeho.

[39] Urukiko rwanatumije mu iburanisha uwitwa Mukunzi Emmanuel, Umubitsi w'impapurompamo wungirije, kugira ngo rumusabe amakuru mu rwego rwo kumenya niba ariwe koko wasinye ku masezerano y'ubukode burambye nomero 2529/KIR/MUS yo ku wa 01/09/2011, yanditseho ko ukodesha ubutaka ari Mparirwa Justin na Uwimana Marine, avuga ko ariwe wayasinye ahereye ku byagaragajwe n'inzego zari zishinzwe kubarura ubutaka. Ibi bikaba binasubiza ikibazo cyari cyagaragajwe n'uregwa avuga ko icyo cyangombwa kitabayeho.

[40] Abatangabuhamya bavuze ko ishyamba riburanwa ari irya Mutabazi:

a. Uwitwa Habiyakare Jean yavuze ko ishyamba ari irya Mutabazi, ko ariwe wariteresheje, kandi ko Mparirwa ntaho ahuriye naryo. Yavuze ko irya Mparirwa ari iryo yaguze na Mugambira ryegeranye n'irya Mutabazi, tukaba twari uduti duto imiswa ikaturya;

b. Uwitwa Kagimbura Gaspard yavuze ko yateye ibiti ahaburanwa, ahembwa na Mutabazi, akaba ahamya ko ishyamba ari irye. Avuga kandi ko hari isambu yagurishije Mparirwa yegeranye n'ahaburanwa, nawe agateramo ishyamba yometse ku rya Mutabazi ku buryo hagati nta rubibi

rurimo. Yongeraho ko iyo Mparirwa yazaga mu kiruhuko, yamubonaga atembera iryo shyamba ari kumwe na mukuru we Mutabazi;

c. Nyirahumure Frida yavuze ko ishyamba riburanwa ryatewe na Mutabazi, ariko ubuhamya bwe bukaba butashingirwaho n'Urukiko kuko ari mushiki wa Mwumvaneza Justin na Mutabazi.

[41] Uwitwa Bendantunguka Augustin yavuze ko atuye aho kuva mu 1996, akaba yarasaranganyije isambu ya Mparirwa hirya y'ishyamba riburanwa, agahabwa 50 m kuri 150 m. Yavuze ko mbere yo kuhasaranganya harimo ibiti by'inturusu, imiswa ikaza kubirya. Bendantunguka Augustin yari yarohereje n'ubuhamya bwanditse mu Rukiko avuga ko yasaranganyije isambu yahoze ari iya Mwunvaneza Justin. Icyagaragaye mu gihe cy'iperereza, ni uko aho Bendantunguka Augustin avuga ko yasaranganyije, hatandukanye n'ahari ishyamba riburanwa, ubuhamya bwe bukaba ntacyo bwafasha Urukiko.

[42] Ku bijyanye no kuba nta mukono wa Kagitare Dancille ugaragara kuri raporo y'ikemurwa ry'ikibazo yavuzwe haruguru, abitwa Murambira Eliyazar, Twagiramungu Fréderic, Kagimbura Gaspard na Twagirimana Rachid, babwiye Urukiko ko Kagitare Dancille yari mu nama yabaye ku wa 12/07/2010, ariko ko yivumbuye akanga gusinya kuri raporo yayo, yumvise abatangabuhamya yazanye bavuze ibyo adashaka.

[43] Kuba amasezerano y'ubukode burambye nomero 2529/KIR/MUS yo ku wa 01/09/2011, agaragaza ubutaka bufite 1.514 sqm, mu gihe ubutaka bwaregewe bufite hegitari 3,6, icyagaragariye Urukiko mu gihe cy'iperereza ni uko, ishyamba ryose ryahoze ringana na 3.6 ha, nyuma hakanyuramo umuhanda uricamo ibice 2 bitangana. Igice kimwe kingana na 1.514 sqm, akaba ari nacyo cyakorewe icyangombwa ababuranyi bashyikirije Urukiko, naho ikindi ari nacyo kinini kikaba kitarakorewe icyangombwa kubera ko hajemo amakimbirane ajyanye n'imanza.

[44] Urukiko rushingiye ku ngingo ya 65 y'Itegeko No 15/2004 ryo ku wa 19/07/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko Urukiko arirwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa, rushingiye kandi ku isesengura rwakoze ku buhamya bwose bwatanzwe, ubwinshi bukaba buhuriza ku kuba ishyamba riburanwa ari irya Mparirwa, rukanashingira ku byo rwiboneye mu gihe cy'iperereza; rurasanga nta gushidikanya ko ishyamba riburanwa ringana na 3,6 ha ari irya Mwumvaneza Justin, ari nawe ufite irindi zina rya Mparirwa, na Uwimana Marine.

[45] Urukiko rukaba rusanga rero, hashingiwe ku bisobanuro byose byatanzwe, ishyamba riburanwa ringana na 3,6 ha, riherereye mu Kagali ka Nganda, Umurenge wa Musaza, Akarere ka Kirehe, ari irya Mwumvaneza Justin, akaba akirisangiye na Uwimana Marine kuko ritagaragara mu byo urubanza rw'ubutane nomero 2009-54209 rwo ku wa 11/06/2010 rwabagabanyije.

Kumenya niba hari indishyi zatangwa mu rubanza

[46] Me Niyibizi Diogene avuga ko Uwimana Marine asaba kwishyurwa na Kagitare Dancille indishyi zikurikira:

a. Indishyi z'akababaro zingana na 10.000.000 Frw;

b. amafaranga Uwimana Marine yatagetswe kwishyura mu rubanza RC 0576/010/TB/KRH rwaciwe ku wa 31/01/2011, n'ayo yategetswe kwishyura mu rubanza No RCA 0048/11/TGI/NGOMA;

c. Amafaranga y'ikurikiranarubanza angana na 2.000.000 Frw;

d. Igihembo cy’Avoka cyatanzwe mu manza zabanje kingana na 3.500.000 Frw;

e. Igihembo cy’Avoka ku rwego rw’Urukiko rw’Ikirenga kingana na 2.000.000 Frw;

f. Igihombo yamuteje kingana na 10.000.000 Frw, gikomoka ku nyungu yamuvukije kuko kuva ku wa 26/06/2012 kugeza mu 2018, Kagitare Dancille yakomeje gusarura ishyamba, agatema ibiti, akarunda amasiteri akagurisha.

[47] Kagitare Dancille avuga ko ibyo Uwimana Marine asaba ntabyo akwiriye, kuko yakoze uburiganya yifashishije murumuna we Munyana Amina, bityo akaba asaba Urukiko gutegeka ko ikirego cye nta shingiro gifite. Kagitare Dancille yatanze kandi ikirego kiregera kwiregura asaba Urukiko gutegeka Uwimana Marine kumuha:

a. amafaranga angana na 2.000.000 kubera imyaka yose amaze amusiragiza;

b. agaciro k'ibiti yasaruye kangana na 10.000.000 Frw;

c. amafaranga y'ikurikiranarubanza n'igihembo cy’Avoka kuri uru rwego angana na 3.000.000, yose hamwe akaba 15.000.000 Frw.

UKO URUKIKO RUBIBONA

[48] Urukiko rurasanga indishyi z’akababaro Uwimana Marine asaba atazihabwa kuko atazisobanuye. Rurasanga kandi amafaranga avuga ko yategetswe mu rubanza RC 0576/010/TB/KRH rwaciwe ku wa 31/01/2011, n’ayategetswe mu rubanza RCA 0048/11/TGI/NGOMA rwaciwe ku wa 20/10/2011 atagaragara muri izo manza kuko ariwe wazitsinze, akaba atanasobanura ayo ariyo, rukaba rero ntaho rwahera ruyamugenera.

[49] Urukiko rurasanga amafaranga 10.000.000 Frw UWIMANA Marine asaba y’igihombo avuga ko yatejwe na KAGITARE Dancille, gikomoka ku nyungu yavanye mu ishyamba, atarayatangiye ibimenyetso, rukaba ntaho rwahera ruyamugenera.

[50] Ku bijyanye n’amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka, Urukiko rurasanga ayo asaba ari menshi kandi atarayatangiye ibisobanuro, rukaba rumugeneye mu bushishozi bwarwo 300.000 Frw y’ikurikiranarubanza na 500.000 Frw y’igihembo cy’Avoka kuri uru rwego, yose hamwe akaba 800.000 Frw.

[51] Urukiko rurasanga indishyi Kagitare Dancille asaba atazigenerwa kuko ntacyo yatsindiye mu rubanza.

III. ICYEMEZO CY’URUKIKO

[52] Rwemeje ko ikirego cyatanzwe na Uwimana Marine gisaba gusubirishamo ku mpamvu z’akarengane, urubanza N° RCA 0334/14/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 27/02/2014, gifite ishingiro;

[53] Rwemeje ko ikirego kiregera kwiregura cyatanzwe na Kagitare Dancille kidafite ishingiro;

[54] Rwemeje ko urubanza RCA 0334/14/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 27/02/2014, ruhindutse kuri byose;

[55] Rwemeje ko ishyamba rifite 3,6 ha riherereye mu Kagari ka Nganda, Umurenge wa Musaza, Akarere ka Kirehe, ari irya Mwumvaneza Justin asangiye na Uwimana Marine;

[56] Rutegetse Kagitare Dancille kwishyura Uwimana Marine 800.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka.