# KAZIMBAYA N'UNDI v NGIRABATWARE N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/RC 00045/2017/SC (Kayitesi Z., P.J., Kayitesi R. na Rukundakuvuga, J.) 26 Nyakanga 2019]

*Amategeko agenga imanza z'imbonezamubano – Ihererekanya ry'ubutaka rishingiye ku muco – Mu gihe uwahawe ubutaka yataye ibyo ahawe akigendera, nta cyabuzaga nyir'ugutanga gusubirana ahatanzwe ku bw'umuco wariho icyo gihe.*

*Amategeko agenga imiburanishirize y'imanza – Agaciro k'urubanza rwabaye itegeko – urubanza ruba itegeko hagati y'abaruburanye, rukaba rudashobora kwifashishwa mu kubangamira inyungu z'utararugizemo uruhare (Res inter alios judicata nec nocet nec prodest).*

**Incamake y'ikibazo:** Bihama na Nyirabera bahunze igihugu mu mwaka wa 1959 basize imitungo irimo imirima, nyuma yo gutahuka mu Rwanda nyuma yo mu 1994, abana babo Kazimbaya Dismas n'abavandimwe be Kaberuka Aimable na Buzizi JMV batangiye gukurikirana isambu bakomora kuri abo babyeyi babo yigaruriwe n'abaturage barimo n'abahoze mu nzego z'ubuyobozi bw'icyahoze ari Komine Nkumba, barimo Bukokwe wari Burugumesitiri, muramu we Rwanzayire wari umwungirije mu buyobozi bwa Komine na Bitinde wari Umupolisi.

Bamwe mu baturage bari batunze iyo sambu bemeye gusaranganya igice cy'isambu bari bafite na Kazimbaya n'abavandimwe be, ariko abitwa Ngirabatware Bénoît na Nyiramategeko Agnès barabyanga, bituma Kazimbaya n'abavandimwe be babarega kwigabiza umutungo w'umuryango wabo mu rubanza.

Ikibazo cyabo cyageze mu bunzi no mu nkiko, ibyakozwe mbere byose biza guteshwa agaciro, ikibazo gitangirira mu urubanza No RC 0094/14/TB/Gah rwaciwe n'Urukiko rw'Ibanze rwa Gahunga kuwa 05/06/2014, aho rwemeje ko imirima itatu iburanwa ari iy'abareze, hashingiwe ku mpamvu z'uko n'abandi bari barigabije imitungo y'abarega mu buryo bumwe n'abaregwa bemeye gusaranganya, ku nyandiko yo kuwa 02/03/2013 Komisiyo y'Ubutaka ku rwego rw'Igihugu yemeje ko iyo mirima ikomoka kuri se w'abarega, ku mvugo z'abatangabuhamya basobanura neza ko Rwanzayire, Ngirabatware Bénoît avuga ko akomoraho isambu ayiguze, yahabohoje ubwo yari Burugumesitiri. Ku bijyanye n'umurima uregwa Nyiramategeko, rwasobanuye ko baburanisha urubanza No RC 122/4 bavuga ko rwabaye itegeko nyamara nta kigaragaza ko uwo murima Nyiramategeko Agnès aregwa waburanywemo mu mirima umunani yaburanywe.

Kazimbaya n'abavandimwe be nubwo batsinze, ntibishimiye imikirize y'urubanza, barajurira banenga urukiko rwa mbere ko habayeho kwitiranya imirima barega Nyiramategeko, ko uwo bahawe n'ubundi bawusanganywe binyuze mu isaranganya; ku rundi ruhande Nyiramategeko na bagenzi be baregwaga nabo bajurira bavuga ko urukiko rwa mbere rwirengagije ibimenyetso n'amategeko.

Ubujurire bwanditswe kuri No RCA 0119/14/TGI/MUS-RCA 0120/14/TGI/MUS – RCA 122/14/TGI/MUS, rucibwa ku wa 11/12/2014, Urukiko rwemeza ko imirima iburanwa ari iya Nyiramategeko Agnès na Ngirabatware Bénoît, ngo kubera ko Kazimbaya Dismas na bagenzi be bemera ko imirima barega Ngirabatware Bénoît ari iyo yaguze n'uburyo Ngirabatware Bénoît

yabonyemo imirima ibiri aburana nta buriganya burimo; kandi ko hari inyandiko zo mu 1985 zigaragaza ko imirima Ngirabatware Bénoît aregwa yayiguze ku mafaranga 92,000 Frw na 51,000 Frw, kandi n'ubutaka buregerwa akaba yarabwibarujeho nta buriganya.

Ku byerekeye imirima iregwa Nyiramategeko Agnès, Urukiko rwasobanuye ko umurima barega Nyiramategeko Agnès ari uwo umugabo we yahawe na nyina Kabusoro wari watsindiye imirima myinshi n'uburanwa urimo, nk'uko bigagaragara mu rubanza No RC 2176/R6/68 na No RCA 369/RUH zabaye itegeko; no kuba Nyiramategeko Agnès uburyo yabonyemo umurima uburanwa nta buriganya burimo kandi akaba yarawibarujeho.

Kazimbaya Dismas n'abavandimwe be bandikiye Urwego rw'Umuvunyi basaba ko urubanza No RCA 0119/14/TGI/MUS-RCA 0120/14/TGI/MUS – RCA 122/14/TGI/MUS rusubirwamo ku mpamvu z'akarengane, maze nyuma yo kurusesengura Urwego rw'Umuvunyi rwandikira Perezida w'Urukiko rw'Ikirenga tariki ya 21/01/2016, rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko yemeza ko urwo rubanza rugaragaramo akarengane, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Urubanza rw'akarengane rwanditswe kuri Nº RS/INJUST/RC 00045/2017/SC, nyuma y'inzitizi yabyukijwe n'uruhande ruregwa yo kutakira ikirego cya Kazimbaya Dismas, Kaberuka Aimable na Buzizi Jean Marie Vianney ishingiye ku kuba barasubirishijemo urubanza ku mpamvu z'akarengane aho kurusubirishamo ingingo nshya, urukiko rufata icyemezo kuri iyo nzitizi kuwa 04/01/2019, rwemeza ko iyo nzitizi nta shingiro ifite.

Nyuma y'iperereza ryakozwe aho ikiburanwa kiri no kumva abatangabuhamya baturiye isambu iburanwa, urukiko rwahitishijemo ababuranyi gukemura ikibazo mu bwumvikane, hashingiwe ku biteganywa n'ingingo ya 9, igika cya 3 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, maze Ngirabatware Bénoît na Kazimbaya Dismas n'abavandimwe be bemeranya kurangiza ikibazo mu bwumvikane, Nyiramategeko Agnès ahitamo gukomeza urubanza.

Ababuranyi bombi bemeranyijwe ko bagabana umurima Ngirabatware Bénoît yari afite ndetse batera n'imbago aho bagabanira, urubanza rukomeza gusa hagati yabo ku bijyanye n'indishyi z'ikurikirana rubanza batumvikanyeho, no kuri Nyiramategeko Agnès.

Kazimbaya n'abavandimwe be basobanuye ko akarengane bagize mu rubanza rusabirwa gudubirwamo gashingiye ku kuba urukiko rwaremeje ko umurima uburanwa ari uwa Nyiramategeko Agnès ngo kandi bawukomora kuri se Bihama ngo kuko n'ubwo avuga ko yawuhawe nk'intekeshwa na Nyirabukwe Kabusoro, ariko wahoze mu bigize isambu ya Bihama, ngo kuko wari umwe wari warigabijwe na Kabusoro, uyu akawugabanya abana be aribo Ntigurirwa (umugabo wa Nyiramategeko Agnès), Ndabateze na Mbera; hakaba kandi hari n'abandi bakomora amasambu bafite kuri iyo sambu ya Bihama, nka Iyakaremye na Mukarugwiza wari waratekeshejwe, bose bemeye gusaranganya, Ntigurirwa waje gusimburwa na Nyiramategeko Agnès muri uru rubanza, akaba ariwe wenyine ubyanga. Bavuga ndetse ko imvugo z'abatangabuhamya bagaragaye mu mwanzuro w'Abunzi aribo Ndungutse, Nsangayimana, Gatambara na Munyakazi basobanuye imvano y'iyo sambu; ko Nyiramategeko Agnès ayikomora kuri nyirabukwe Kabusoro, ariko yarahoze ari iya Bihama.

Ku byo uregwa yaburanye avuga ko hari urubanza No RC 122/4 rwaciwe n'Urukiko rwa Kanto rwa Maya, rugakomereza mu Urukiko rwa Mbere rw'Iremezo rwa Ruhengeri kuri RC 2176/R6/68 rukajuririrwa mu Rukiko rw'Ubujurire rwa Ruhengeri kuri RCA 369/RUH rwabaye itegeko, aho Kabusoro yatsinze uwo murima Rubabaza, bavuze ko urwo rubanza nta gaciro rwagira ngo kuko bombi baburanye ibitari ibyabo.

**Incamake y'icyemezo:** 1. Mu gihe uwahawe yataye ibyo ahawe akigendera nta cyabuzaga nyir'ugutanga gusubirana ahatanzwe ku bw'umuco wariho icyo gihe.

2. Urubanza ruba itegeko hagati y'abaruburanye, ntirushobora kwifashishwa mu kubangamira inyungu z'utararugizemo uruhare (Res inter alios judicata nec nocet nec prodest).

**Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro. Amagarama y'urubanza aherereye ku isanduku ya Leta**

**Amategeko yashingiweho:**
Itegeko Nº 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65.
Itegeko Nº 22/2018 ryo kuryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 14.

**Nta manza zifashishijwe.**

**Inyandiko z'abahanga zakoreshejwe:**
Monique BANDRAC et al., Droit et pratique de la procédure civile, Ed. Dalloz,1999, p.933.
Hakim BOULARBAH et al; Droit judiciare, Tome 2, Manuel de Procédure Civile, Ed. Larcier, 2015, p 711

# Urubanza

# I. IMITERERE Y'URUBANZA

[1] Imirima Kazimbaya Dismas n'abavandimwe be Kaberuka Aimable na Buzizi JMV baregera, ikomoka ku isambu ngari ababyeyi babo Bihama na Nyirabera basize ubwo bameneshwaga bagahunga igihugu mu 1959. Iyo sambu bavuga ko nyuma yo guhunga kw'ababyeyi babo yigaruriwe n'abaturage barimo n'abahoze mu nzego z'ubuyobozi bw'icyahoze ari Komine Nkumba, ari bo Bukokwe wari Burugumesitiri, muramu we Rwanzayire wari umwungirije mu buyobozi bwa Komine na Bitinde wari Umupolisi.

[2] Abaturage bari barigaruriye iyo sambu bagiye nabo bayigabira abandi baturage cyangwa bakayigurisha, ariko aho Kazimbaya Dismas n'abavandimwe be bagarukiye mu Gihugu bamwe muri abo baturage bemeye gusaranganya nabo, Ngirabatware Bénoît na Nyiramategeko Agnès barabyanga, Kazimbaya Dismas n'abavandimwe be bakabarega kwigabiza umutungo w'umuryango wabo, ari naho hakomoka urubanza No RCA 0119/14/TGI/MUS-RCA 0120/14/TGI/MUS – RCA 122/14/TGI/MUS bavuga ko rurimo akarengane.

[3] Ngirabatware Bénoît yanze gusaranganya avuga ko umutungo atunze yawuguze na Rwanzayire, ko umuryango wa Bihama atawuzi.

[4] Nyiramategeko Agnès we yanze gusaranganya avuga ko umurima uburanwa we n'umugabo we bawuhaweho umunani nk'intekeshwa na Nyirabukwe Kabusoro nawe wawukomoraga ku rubanza No 122/04 yaburanye na Rubabaza waburanirwaga na Bitinde rwaciwe n'Urukiko rwa Kanto rwa Maya ku wa 03/07/1968, rugakomereza mu Rukiko rwa Mbere rw'Iremezo rwa Ruhengeri kuri RC 2176/R6/68, rukajuririrwa mu Rukiko rw'Ubujurire rwa Ruhengeri kuri RCA 369/RUH, kandi ko amaze gutsindira iyo sambu yayigabanyije abana be aribo Ntirugurirwa (umugabo wa Nyiramategeko Agnès), Mbera na Ndabateze.

[5] Kazimbaya Dismas n'abavandimwe be baregeye mu bihe bitandukanye Inteko y'Abunzi b'Akagari ka Karangara, barega Ngirabatware Bénoît na Ntirugurirwa Charles (umugabo wa Nyiramategeko Agnès), basaba isaranganya. Mu cyemezo iyo nteko yafashe ku wa 17/08/2010 no ku wa 27/08/2010 yemeje ko ibirego byabo bifite ishingiro, ko abaregwa bagomba gusaranganya na Kazimbaya Dismas n'abavandimwe be.

[6] Ngirabatware Bénoît yaregeye Urukiko rw'Ibanze rwa Gahunga asaba gutesha agaciro umwanzuro w'Inteko y'Abunzi wo ku wa 17/08/2010 na Ntirugurirwa Charles nawe aregera gutesha agaciro umwanzuro wo ku wa 27/08/2010. [

[7] Mu rubanza No RC 0456/010/TB/GAH rwaciwe ku wa 24/02/2011, Urukiko rwemeje ko ikirego cya Ntirugurirwa Charles kitakiriwe, ariko rutesha agaciro umwanzuro w'Abunzi.

[8] Naho mu rubanza No RC 0363/010/TB/GAH rwaciwe ku wa 24/02/2011, urwo Rukiko rwemeza ko ikirego cya Ngirabatware Bénoît kitakiriwe nyuma yo gusuzuma inzitizi yatanzwe na Kazimbaya Dismas yo kuba yararezwe wenyine kandi yaraburanye imbere y'Inteko y'Abunzi afatanyije n'abavandimwe ifite ishingiro, ariko runategeka ko umwanzuro w'Abunzi uvaho.

[9] Ngirabatware Bénoît yajuririye Urukiko Rwisumbuye rwa Musanze, na none mu rubanza No RCA 0076/11/TGI/MUS rwaciwe ku wa 30/12/2011, ikirego cye nticyakirwa, bityo n'umwanzuro w'Abunzi ukomeza kuvanwaho.

[10] Nyuma y'iyo myanzuro y'Abunzi yakuweho n'inkiko zajuririwe, Kazimbaya Dismas n'abavandimwe be bareze Ngirabatware Bénoît na Nyiramategeko Agnès (wasigaranye isambu iburanwa, umugabo we Ntirugurirwa amaze gupfa) mu Rukiko rw'Ibanze rwa Gahunga avuga ko bigabije isambu y'umuryango maze mu rubanza No RC 0094/14/TB/GAH rwaciwe ku wa 05/06/2014, urwo rukiko rwemeza ko ikirego cye n'abavandimwe be gifite ishingiro, ko bagomba guhabwa imirima baregeye, kubera impamvu zikurikira:

- Kuba abaturiye imirima iburanwa nabo bari barigabije imitungo y'abarega mu buryo bumwe n'abaregwa, baremeye gusaranganya;
- Kuba nk'uko bigaragara mu nyandiko yo kuwa 02/03/2013, Komisiyo y'Ubutaka ku rwego rw'Igihugu yaremeje ko iyo mirima ikomoka kuri se w'abarega;
- Kuba hari abatangabuhamya basobanura neza ko aho Ngirabatware Bénoît avuga ko yaguze, Rwanzayire wahamugurishije yahabohoje ubwo yari Burugumesitiri;

- Kuba abatangabuhamya b'uruhande ruregwa bivuguruza kubera ko babanje guhakana ko Rwanzayire atigeze aba uwungirije Burugumesitiri nyuma bakaza kubyemera, ndetse bakanavuga ko atigeze atura mu mirima iburanwa;
- Kuba mu rubanza No RC 122/4 nta kigaragaza ko umurima Nyiramategeko Agnès aregwa waburanywemo cyane ko haburanwaga imirima umunani.

[11] Ngirabatware Bénoît, Nyiramategeko Agnès na Kazimbaya Dismas n'abavandimwe be bose bajuririye Urukiko Rwisumbuye rwa Musanze, Kazimbaya Dismas n'abavandimwe be bavuga ko habayho kwitirinya imirima, kuko Urukiko rwategetse ko bahabwa umurima basanganywe bahawe mu isaranganya, ibirego byombi byandikwa kuri No RCA 0119/14/TGI/MUS-RCA 0120/14/TGI/MUS – RCA 122/14/TGI/MUS urubanza rucibwa ku wa 11/12/2014, Urukiko rwemeza ko imirima iburanwa ari iya Nyiramategeko Agnès na Ngirabatware Bénoît, kubera impamvu zikurikira:

a. Ku byerekeye imirima iregwa Ngirabatware Bénoît:
   - Kuba Kazimbaya Dismas na bagenzi be bemera ko imirima barega Ngirabatware Bénoît ari iyo yaguze;
   - Kuba uburyo Ngirabatware Bénoît yabonyemo imirima ibiri aburana nta buriganya burimo;
   - Kuba hari inyandiko zo mu 1985 zigaragaza ko imirima Ngirabatware Bénoît aregwa yayiguze ku mafaranga 92,000 Frw na 51,000 Frw, kandi n'ubutaka buregerwa akaba yarabwibarujeho nta buriganya.

b. Ku byerekeye imirima iregwa Nyiramategeko Agnès
   - Kuba umurima barega Nyiramategeko Agnès ari uwo umugabo we yahawe na nyina Kabusoro wari watsindiye imirima myinshi n'uburanwa urimo nk'uko bigaragara mu rubanza No RC 2176/R6/68 rwabaye itegeko[1] na No RCA 369/RUH rwabaye itegeko;
   - Kuba Nyiramategeko Agnès uburyo yabonyemo umurima uburanwa nta buriganya burimo kandi akaba yarawibarujeho.

[12] Kazimbaya Dismas n'abavandimwe be bandikiye Urwego rw'Umuvunyi basaba ko urubanza No RCA 0119/14/TGI/MUS-RCA 0120/14/TGI/MUS – RCA 122/14/TGI/MUS rusubirwamo ku mpamvu z'akarengane, maze nyuma yo kurusesengura Urwego rw'Umuvunyi rwandikira Perezida w'Urukiko rw'Ikirenga tariki ya 21/01/2016, rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

[13] Nyuma yo kurusesengura, Perezida w'Urukiko rw'Ikirenga amaze gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko yemeje ko urwo rubanza rusubirwamo, maze rwandikwa kuri Nº RS/INJUST/RC 00045/2017/SC.

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[1] Uru rubanza rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Ruhengeri ku wa 30/08/1971, haburana Kabusoro (nyirabukwe wa Nyiramategeko Agnès wabanje kuburana ariko nyuma aza kwitaba Imana urubanza rukomezwa na Ntirugurirwa, umugabo wa Nyiramategeko Agnès) na Rubabaza wari uhagarariwe n'umuhungu we Bitinde rwemeje ko isambu yaburanwaga ari iya Kabusoro, nyirabukwe wa Nyiramategeko Agnès.

[14] Uru rubanza rwaburanishijwe mu ruhame ku wa 10/12/2018, Kazimbaya Dismas, Kaberuka Aimable na Buzizi Jean Marie Vianney bahagarariwe na Me Kamanzi Cyiza Benjamin afatanyije na Me Karangwa Vincent, naho Ngirabatware Bénoît na Nyiramategeko Agnès bahagarariwe na Me Habimana Donath.

[15] Me Habimana Donath yatanze inzitizi yo kutakira ikirego ishingiye ku kuba barasubirishijemo urubanza ku mpamvu z'akarengane aho kurusubirishamo ingingo nshya mu gihe bavuga ko hari ibimenyetso byirengagijwe, kandi itegeko riteganya ko usubirishamo urubanza ku mpamvu z'akarengane agomba kuba yararangije inzira zose z'ubujurire zisanzwe n'izidasanzwe. Me Kamanzi Cyiza Benjamin na Me Karangwa Vincent bavuga ko nta bimenyetso bishya batanze ahubwo ko batanze ibimenyetso Urukiko ntirubihe agaciro, akaba ariyo mpamvu basubirishijemo urubanza ku mpamvu z'akarengane, basaba ko iyo nzitizi itahabwa ishingiro. Urubanza kuri iyo nzitizi rwaciwe kuwa 04/01/2019, Urukiko rwemeza ko nta shingiro ifite.

[16] Urubanza rwasubukuwe ku wa 12/03/2019, Kazimbaya Dismas, Kaberuka Aimable na Buzizi Jean Marie Vianney bahagarariwe na Me Kamanzi Cyiza Benjamin afatanyije na Me Karangwa Vincent, Ngirabatware Bénoît na Nyiramategeko Agnès bahagarariwe na Me Habimana Donath, ntirwapfundikirwa kuko Urukiko rwasanze ari ngombwa ko ababuranyi n'abavoka babo bajya aho ikiburanwa kiri, bakazagaruka mu rukiko bafite ibipimo by'aho bavuga basaranganyijwe n'ibisubizo ku bibazo bimwe bagiye babazwa, bikurikira:

a. ibimenyetso bigaragaza inkomoko y'isambu Ngirabatware Bénoît aburana na bene Bihama,
b. ibimenyetso bigaragaza niba Ngirabatware Bénoît yaba yarasaranganyije,
c. ibimenyetso bigaragaza niba isambu iregwa Nyiramategeko Agnès yarigeze iba iya Bihama cyangwa se ikomoka ku gisekuru cye nk'uko abivuga,
d. niba hari aho Nyiramategeko Agnès yaba yarabasaranganyije; iburanishwa ryimurirwa ku wa 21/05/2019.

[17] Kuwa 21/05/2019, urubanza rwaraburanishijwe, Kazimbaya Dismas, Kaberuka Aimable na Buzizi Jean Marie Vianney bahagarariwe na Me Kamanzi Cyiza Benjamin, Ngirabatware Bénoît na Nyiramategeko Agnès bahagarariwe na Me Habimana Donath; kuri uwo munsi urubanza ntirwapfundikirwa, iburanisha ryimurirwa kuwa 25/06/2019, kugira ngo Urukiko ruzabanze rukore iperereza aho ikiburanwa kiri.

[18] Kuwa 13/06/2019, Urukiko rumaze kugera aho ikiburanwa kiri no kumva neza amavo n'amavuko y'ikibazo, nyuma yo kugenzura ahaburanwa rubifashijwemo n'abaturanyi rwahasanze, rwabajije ababuranyi niba batahitamo ko ibibazo byabo bikemurwa mu bwumvikane nk'uko biteganywa n'ingingo ya 9, al3 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[2], maze Ngirabatware Bénoît na Kazimbaya Dismas bemeranya kubirangiza mu bwumvikane ndetse n'umwanzuro

[2] Ingingo ya 9 al3 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko:" …*umucamanza ashobora gushishikariza ababuranyi gukoresha ubwunzi iyo abona ko aribwo buryo buboneye mu kurangiza impaka…"*

w'ubwumvikane bawemeranyaho naho Nyiramategeko Agnès wavugirwaga na Kwishakira Philippe kuko atari ahari (ngo yari arwaye) arabyanga.

**a. Ibikubiye mu mwanzuro w'ubwumvikane hagati ya Ngirabatware Bénoît na Kazimbaya Dismas n'abavandimwe be.**

[19] Ababuranyi bahisemo kumvikana, Urukiko rwabahaye umwanya ngo buri ruhande ukwarwo na Avoka warwo babanze babivuganeho, hanyuma impande zombi zirahura, zigera ku mwanzuro ukurikira:

- Ababuranyi bombi bemeranyijwe ko bagabana umurima Ngirabatware Bénoît yari afite ndetse batera n'imbago aho bagabanira; Ngirabatware Bénoît agaherera hepfo, Kazimbaya Dismas n'abo bafatanyije bagaherera haruguru.
- Icyakora ababuranyi ntabwo babashije kumvikana ku mafaranga y'ikurikiranarubanza n'igihembo cya Avoka, bityo basaba Urukiko ko rwazabakiranura kuri icyo gusa.

[20] Ku wa 25/06/2019, urubanza rwarasubukuwe, Kazimbaya Dismas, Kaberuka Aimable na Buzizi Jean Marie Vianney bahagarariwe na Me Kamanzi Cyiza Benjamin afatanyije na Me Karangwa Vincent, naho Ngirabatware Bénoît na Nyiramategeko Agnès bahagarariwe na Me Habimana Donath, rukomereza ku ngingo zitemeranyijweho arizo:

1. Kumenya nyiri umurima ufitwe na Nyiramategeko Agnès
2. Ibyerekeye indishyi zisabwa muri uru rubanza.

# II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

**b. 1. Kumenya nyiri umurima ufitwe na Nyiramategeko Agnès**

[21] Me Kamanzi Cyiza Benjamin avuga ko impamvu zigaragaza akarengane mu rubanza No RCA 0119-0120-0122/14/TGI/MUS, ari uko umurima ufitwe na Nyiramategeko Agnès ari uw'umuryango wa Bihama kuko n'ubwo avuga ko yawuhawe nk'intekeshwa na Nyirabukwe Kabusoro, uwo murima wahoze mu bigize isambu ya Bihama, se wa Kazimbaya Dismas. Avuga ko ikibihamya ari uko uwo murima ufitwe na Nyiramategeko Agnès wahoze ari umurima umwe wari warigabijweho na Kabusoro, uyu Kabusoro akawugabanya abana be aribo Ntigurirwa (umugabo wa Nyiramategeko Agnès), Ndabateze na Mbera; hakaba kandi hari n'abandi bakomora amasambu bafite kuri iyo sambu ya Bihama, nka Iyakaremye na Mukarugwiza wari waratekeshejwe; bose bakaba baremeye gusaranganya, Ntirugurirwa waje gusimburwa na Nyiramategeko Agnès muri uru rubanza, akaba ariwe wenyine ubyanga. Me Kamanzi Cyiza Benjamin avuga ko ibi byose bishimangirwa n'imvugo z'abatangabuhamya bagaragara mu mwanzuro w'Abunzi aribo Ndungutse, Nsangayimana, Gatambara na Munyakazi basobanuye imvano y'iyo sambu; ko Nyiramategeko Agnès ayikomora kuri nyirabukwe Kabusoro, ariko yarahoze ari iya Bihama.

[22] Me Karangwa Vincent avuga ko kuba Nyiramategeko Agnès avuga ko isambu ayikomora kuri Semicaca nawe wari warayihawe na Se atari byo, kuko iyo sambu yose yasizwe na Bihama mu 1959. Me Kamanzi Cyiza Benjamin avuga ko ku byerekeranye no kuba Nyiramategeko Agnès yarayihaweho intekeshwa nta gaciro byagira imbere y'amategeko, nk'uko biteganywa

n'ingingo ya 33 y'Itegeko no 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashakanye, impano n'izungura[3], agace ka 3, kuko Kabusoro wayitanze, itari iye.

[23] Naho ku birebana no kuba hari urubanza no RC 122/4 rwaciwe n'Urukiko rwa Kanto rwa Maya, rugakomereza mu Rukiko rwa Mbere rw'Iremezo rwa Ruhengeri RC 2176/R6/68, rukajuririrwa mu Rukiko rw'Ubujurire rwa Ruhengeri kuri RCA 369/RUH, kandi rukaba rwarabaye itegeko Kabusoro yayitsindiyeho Rubabaza, Me Kamanzi Cyiza Benjamin avuga ko narwo nta gaciro rwahabwa, kuko ababuranye bose muri urwo rubanza baburanye ibitari ibyabo. Me Karangwa Vincent avuga ko urwo rubanza rwabaye mu 1973 rwaburanwaga na Kabusoro na Rubabaza baburana imitungo yasizwe na Bihama mu 1959, ko nta muntu wo kwa Bihama wigeze agira icyo aruvugamo, ko abana ba Bihama babona urwo rubanza nta ngaruka rwabagiraho.

[24] Me Habimana Donath avuga ko iyo sambu ari iya Nyiramategeko Agnès, ko atayigaruriye, ko ahubwo yayitekeshejwe na nyirabukwe Kabusoro, uyu nawe akaba yarayikomoraga kuri se Semicaca nawe wari warayihawe na Nyabyenda, ikaba ari uruhererekane rw'igisekuru cya Kabusoro, bityo ikaba ntaho ihuriye na Bihama n'ubwo bari baturanye; ko rero atashoboraga gusaranganya umutungo we bwite.

[25] Me Habimana Donath avuga kandi ko iyo sambu nyirabukwe Kabusoro yanayitsindiye mu manza No RC 122/4 - RC 2176/R6/68 - RC369/RUH, ubwo Rubabaza (se wabo wa Kabusoro waburanirwaga na Bitinde), yigabizaga imirima ya se Semicaca (yitwaje ko icyo gihe nta mwana w'umukobwa wazunguraga), nyuma akayitekesha abana be; izo manza zikaba zarabaye itegeko. Asoza avuga ko kuba iyo sambu Semicaca yaragiye muri Uganda 1954 akayisiga, ababyeyi ba Kazimbaya Dismas bakiri aho ntibayifate, ahubwo igafatwa na Rubabaza umuvandimwe wa Semicaca ari ibimenyetso bihamya ko isambu iburanwa itigeze iba iya Bihama.

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[26] Urukiko rurasanga, mu kwemeza niba umurima uburanwa ari uwa Nyiramategeko Agnès cyangwa ari uwa Kazimbaya Dismas n'abavandimwe be, hakwiye gusuzumwa ingingo ebyiri:

a. Kumenya inkomoko nyakuri y'umurima uburanwa;
b. Kumenya ingaruka z'imanza Kabusoro yaburanye na Rubabaza ku murima uburanwa.

### a. Kumenya inkomoko nyakuri y'umurima uburanwa.

[27] Urukiko rw'Ikirenga rusanga nk'uko byagaragariye ababuranyi n'abaturage bari aho ikiburanwa kiri ku munsi rwakozeho iperereza, nyuma yo kubaza abatangabuhamya batandukanye bamwe bahamya ko isambu yahoze ari iya Bihama abandi bahamya ko ahaburanwa hatigeze haba aho mu muryango wa Bihama, umutangabuhamya Nzanywayimana Faustin wahoze atuye aho kuva kera yasobanuye uko ikibazo giteye maze bimara impaka ku bari bahari bose kandi ntihagira ubivuguruza: yavuze ko umurima Nyiramategeko Agnès aburana

[3] Ivuga ko "Impano yose ita agaciro iyo: … 3° itanzwe n'utari nyirayo;"

wahoze ari agace k'isambu ya Rubango se wa Bihama; hanyuma Rubango aza kuhihera Semicaca. Yavuze ariko ko mu 1954, Semicaca yaje kujya I Bugande ahunze imirimo yo gutera amakawa yariho icyo gihe, Bihama akahasubirana kugeza ubwo ahunze muri 1959 ariwe uhafite. Yavuze kandi ko aho Bihama amariye guhunga, aribwo Rubabaza yahigabije bikaza kuvamo urubanza yaburanye na Kabusoro, umukobwa wa Semicaca, bikarangira Kabusoro ahatsindiye.

[28] Urukiko rw'Ikirenga rushingiye ku ingingo ya 65 y'Itegeko ry'ibimenyetso mu manza n'itangwa ryabyo[4], rurasanga kuba Rubango yari yarahahaye Semicaca ariko Bihama umuhungu wa Rubango akaza kuhisubiza aho Semicaca agendeye, bigaragaza neza ko umurima uburanwa ukomoka mu muryango wa Kazimbaya Dismas n'abandi bene Bihama bari kumwe muri uru rubanza.

[29] Icyakora, kuba uwo murima wari warahawe Semicaca, ku bw'amategeko bituma hibazwa ububasha umuryango wa Bihama wari ufite bwo kwisubiza ahantu wari waratanze. Urukiko rusanga, mu gihe uwahawe yataye ibyo ahawe akigendera nta cyabuzaga nyir'ugutanga gusubirana ahatanzwe ku bw'umuco wariho icyo gihe dore ko icyo gihe nta mategeko yanditse agenga impano ku butaka yari bwagashyirweho mu Rwanda[5]. Muri uru rubanza, ikigaragaza ko uwo muco ariwo wariho, ni uko kuva aho Semicaca agiriye I Bugande mu 1954 kugeza mu 1959 hari harasubiranywe n'umuryango wa Bihama kandi abo mu muryango wa Semicaca nka Rubabaza waje kuhigabiza aho abo kwa Bihama bahungiye, akaba atarigeze ahaburana igihe kwa Bihama bari barahisubije.

[30] Kubera izo mpamvu, Urukiko rurasanga isambu iburanwa ari iya Kazimbaya Dismas n'abo bari kumwe muri uru rubanza, bakaba bakomora ubwo burenganzira ku mubyeyi wabo Bihama nk'uko byasobanuwe mu bika bibanziriza iki. Icyakora, nk'uko n'ubundi Kazimbaya Dismas n'abavandimwe be bagiye basaranganya n'abo basanze mu isambu yabo muri gahunda yo gushyigikira imibanire myiza n'abaturanyi; Urukiko rurasanga bagomba no gusaranganya na Nyiramategeko Agnès ku buryo bungana mu rwego rwo gufata kimwe abari barigabije umutungo w'umuryango wa Bihama aho ahungiye nu mwaka wa 1959; Nyiramategeko Agnès agaherera haruguru naho Kazimbaya Dismas n'abavandimwe be bagaherera hepfo.

### b. Kumenya ingaruka z'imanza Kabusoro yaburanye na Rubabaza ku murima uburanwa.

[31] Me Kamanzi Cyiza Benjamin kimwe na Me Karangwa Vincent bavuga ko urubanza No RC 122/4 - RC 2176/R6/68 - RCA 369/RUH nta gaciro rwahabwa, kuko abaruburanye aribo Kabusoro na Rubabaza baburanye ibitari ibyabo, kandi ko nta muntu wo kwa Bihama wigeze

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[4] Ingingo ya 65 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, igira iti « 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. »

[5] Kugeza mu mwaka 1999 ubwo hashyirwagaho itegeko nº 22/99 ryo kuwa 12/11/1999 ryuzuza interuro ya mbere y'urwunge rw'amategeko mbonezamubano, igitabo cya mbere kandi rishyiraho igice cya gatanu kirebana n'umutungo w'abashakanye, impano n'izungura, nta tegeko ryanditse rirebana n'impano ryari rihari mu Rwanda. Naho ku byerekeye ihererekanya ry'uburenganzira ku butaka butanditse, nabyo byagumye kugengwa n'umuco kugeza mu mwaka wa 2005 ubwo hasohokaga Itegeko Ngenga n° 08/2005 ryo kuwa 14/07/2005 rigenga imicungire y'ubutaka.

agira icyo aruvugamo, bityo abana ba Bihama bakaba babona urwo rubanza nta ngaruka rwabagiraho.

[32] Me Habimana Donath avuga ko Kabusoro yatsindiye isambu iburanwa mu manza No RC 122/4 -RC 2176/R6/68 – RCA 369/RUH, ubwo Rubabaza (se wabo wa Kabusoro waburanirwaga na Bitinde), yigabizaga imirima ya se Semicaca (yitwaje ko icyo gihe nta mwana w'umukobwa wazunguraga), nyuma akayitekesha abana be kandi urwo rubanza rukaba rwarabaye itegeko.

[33] Urukiko rw'Ikirenga rurasanga hari ihame rimenyerewe mu manza mbonezamubano ko urubanza ruba itegeko hagati y'abaruburanye, rukaba rudashobora kwifashishwa mu kubangamira inyungu z'utararugizemo uruhare[6]. Iri hame rishingiye ku isesengura ry'ingingo ya 14 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko "Urubanza rwaciwe ku rwego rwa nyuma rudashobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe". Nk'uko byumvikana, iyi ngingo yiyambazwa gusa iyo umuburanyi abashije kugaragaza ko ikiburanwa ari kimwe, ku mpamvu zimwe ndetse ko n'ababuranyi bari muri urwo rubanza ari bamwe. Mu manza no RC 122/4 -RC 2176/R6/68 – RCA 369/RUH, Kazimbaya Dismas n'abo bari kumwe muri uru rubanza ntibazibayemo ababuranyi, bityo zikaba zidashobora kuba itegeko kuri bo.

### 2. Ku bijyanye n'indishyi zisabwa muri uru rubanza

[34] Me Kamanzi Cyiza Benjamin avuga ko abo ahagarariye bashowe mu manza z'amaherere guhera mu 2008, bakaba babisabira indishyi mu buryo bukurikira:

a. indishyi z'akababaro zo kuvutswa uburenganzira ku butaka bwabo zingana na 7.500.000 Frw;

b. indishyi za 10.000.000 Frw z'icyatamurima, indishyi z'insimburamubyizi za 4.500.000 Frw ku gihe bataye baburana ku rwego rw'Abunzi;

c. indishyi za 3.000.000 Frw z'igihembo cya Avoka guhera mu Rukiko rw'Ibanze rwa Gahunga kugera mu Rukiko rw'Ikirenga, zose hamwe zingana 25.000.000 Frw.

[35] Me Habimana Donath avuga ko Ngirabatware Bénoît nta ndishyi akwiye gutanga kuko nawe yatakaje akurikirana urubanza no gufata neza ubutaka kuko yari azi ko ari ubwe.

[36] Me Habimana avuga kandi ko Nyiramategeko Agnès yashowe mu manza nta mpamvu, ari yo mpamvu atanze ikirego cyuririye ku kindi asaba ko Urukiko rutegeka abarega kumusubiza ibyo yatakaje mu rubanza, birimo indishyi za 1.000.000 Frw zo gushorwa mu manza, n'iz'igihembo cya Avoka zingana na 3.000.000 Frw.

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[6] Res inter alios judicata nec nocet nec prodest. Reba Monique BANDRAC et al. Droit et pratique de la procédure civile, ed. Dalloz,1999, p.933 ou Hakim BOULARBAH et al; Droit judiciare, Tome 2, Manuel de Procédure Civile, ed. Larcier, 2015, p 711.

[37] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa Ngirabatware Bénoît agomba kuyatanga kuko yashoboraga gukemura ikibazo na kare kose bitagombye imanza, ariko kuko ayo Kazimbaya Dismas n'abavandimwe be basaba ari ikirenga kandi batarayatangiye ibisobanuro bisesenguye, bakaba bagenewe mu bushishozi bw'Urukiko amafaranga ibihumbi magana atanu (500.000 Frw).

[38] Urukiko rurasanga kandi indishyi Nyiramategeko Agnès asaba atagomba kuzihabwa kuko ariwe winangiye akagundira umurima uburanwa yemeza ko ari uwe kandi atari byo nk'uko byasobanuwe. Rusanga ahubwo Nyiramategeko Agnès ariwe ugomba gutanga indishyi zishingiye ku mananiza yashyize kuri Kazimbaya Dismas n'abavandimwe be, kuko yanze kugabana umurima uburanwa ku neza agahitamo imanza, ariko kuko ayo bamusaba ari ikirenga kandi nta bisobanuro bishingiye ku mibare ifataka byayatangiwe, Urukiko rubageneye indishyi z'akababaro z'amafaranga ibihumbi ijana (100.000 Frw) n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego, angana n'ibihumbi magana atanu (500.000 Frw) bigenwe mu bushishozi bw'Urukiko.

## III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ikirego cyatanzwe na Kazimbaya Dismas, Kaberuka Aimable na Buzizi Jean Marie Vianney cyo gusubirishamo ku mpamvu z'akarengane urubanza No RCA 0119/14/TGI/MUS-RCA 0120/14/TGI/MUS – RCA 0122/14/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 11/12/2014, gifite ishingiro.

[40] Rutegetse ko imikirize y'urubanza Nº RCA 0119/14/TGI/MUS-RCA 0120/14/TGI/MUS – RCA 0122/14/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 11/12/2014 ihindutse kuri byose;

[41] Rutegetse ko umurima uherereye mu Mudugudu wa Kabaya, Akagari ka Karangara, Umurenge wa Rugarama, Akarere ka Burera ufitwe na Ngirabatware Bénoît bawusaranganya ku buryo bungana, Ngirabatware Bénoît agaherera hepfo, Kazimbaya Dismas n'abavandimwe be bagaherera haruguru nk'uko babyumvikanye muri uru rubanza;

[42] Rutegetse ko umurima uherereye mu Mudugudu wa Sasa, Akagari ka Karangara, Umurenge wa Rugarama, Akarere ka Burera, Kazimbaya Dismas n'abavandimwe be bawusaranganya na Nyiramategeko Agnès ku buryo bungana; Nyiramategeko Agnès agaherera haruguru naho Kazimbaya Dismas n'abavandimwe be bagaherera hepfo.

[43] Rutegetse Ngirabatware Bénoît guha Kazimbaya Dismas, Kaberuka Aimable na Buzizi Jean Marie Vianney bose hamwe amafaranga ibihumbi magana atanu (500.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka.

[44] Rutegetse Nyiramategeko Agnès guha Kazimbaya Dismas, Kaberuka Aimable na Buzizi Jean Marie Vianney bose hamwe amafaranga ibihumbi ijana (100.000 Frw) y'indishyi z'akababaro hamwe n'amafaranga ibihumbi magana atanu (500.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka.