MUHOZI v UWASE N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00017/2022/SC (Mukamulisa, P.J., Cyanzayire, Kazungu, J.) 26 Mata 2024]

Amategeko y'imiburanishirize y'imanza – Gusubirishamo urubanza ku mpamvu z'akarengane – Umuburanyi wiyambaje inzira ebyiri z'ubujurire - Igihe umuburanyi abona atujuje ibisabwa kugirango asabe gusubirishamo urubanza ingingo nshya, nta kimubuza gusaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, apfa kudakoresha izo nzira zombi icyarimwe.

Amategeko agenga imanza z'imbonezamubano – Umutungo w'abashakanye – Uwapfakaye udafitanye umwana na nyakwigendera – Uburenganzira ku mutungo bashakanye - Uwapfakaye udafite umwana yabyaranye na nyakwigendera bashyingiranwe utarongeye gushaka, agira uburenganzira ku mutungo wose bahahanye kugeza igihe na we azaba atakiriho, ariko iyo ahisemo kugabana uwo mutungo, afata ½ cy'umutungo afitanye na nyakwigendera.

Amategeko aganga imanza z'imbonezamubano – Umutungo w'abashakanye – Uwapfakaye ukomeje kurera abana - Mu gihe uwapfakaye yaba afite umutungo wose awurereramo abana ba nyakwigendera maze akongera gushaka, umutungo afitanye na nyakwigendera uragabanywa agahabwa ½ cyawo, ikindi ½ akakizungura kimwe n'abana ba nyakwigendera.

Incamake y'ikibazo: Muhozi yashakanye na Nyirambarushimana basezerana kubana mu buryo bw'ivangamutungo muhahano ariko basezerana ntabwo bigeze bagaragaza umutungo shingiro bahurije hamwe wo gutangiriraho urugo rwabo nkuko itegeko ryariho basezerana ryabiteganyaga. Bashakana Nyirambarushimana yari afite abana ndetse n'imitungo itandukanye ariko baza no gushakana indi mitungo. Uyu yaje gupfa maze Muhozi ntiyumvikana n'abana ba nyakwigendera baregwa muri uru banza, bituma atanga ikirego asaba ko yagabana n'abo bana umutungo yashakanye na nyakwigendera. Urukiko Rwisumbuye rwa Nyarugenge rwasanze isambu imwe ariyo igomba kugabanwa kuko ibindi urega yasabaga atabashije kubitangira ibimenyetso.

Urega yajuririye icyo cyemezo mu Rukiko Rukuru ariko bwo anasaba ko yagabana umutungo akanazungura afatanyijie n'abana ba nyakwigendera, rwemeza ko ubujurire bwe nta shingiro bufite. Muhozi yatanze ikirego muri urwo Rukiko cyo gusubirishamo urubanza ingingo nshya ariko aza gusaba kureka urwo rubanza arabyemererwa kuko yari yarananditse asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

Urubanza rwaje guhabwa Urukiko rw'Ikirenga mu kuruburanisha habanza gusuzumwa inzitizi yo kutakira ikirego yatanzwe n'abaregwa, kuko Muhozi yasubirishijemo urubanza ingingo nshya akanarusubirishamo ku mpamvu z'akarengane. Hakurikiyeho gusuzuma ikibazo cyo kumenya umutungo Muhozi yahahanye na Nyirambarushimana n'uburyo wagabanwa. Urega avuga ko mu mitungo iburanwa harimo umubaruyeho we na Nyirambarushimana, ari nawo Urukiko Rwisumbuye rwemeje ko yawugabana mu buryo bungana n'abandi bazungura ba Nyakwigendera, hakaba n'ibaruye kuri Nyirambarushimana wenyine ndetse n'indi itababaruyeho bose nyakwigendera yazunguye, akavuga ko n'iyo mitungo nubwo itamubaruyeho bayigabana dore ko nawe hari uruhare yayishyizemo kuko ngo yagurishije inzu ye bagasana inzu ibaruye kuri Nyirambarushimana babagamo. Uwase na bagenzi be bareganwa asobanura ko umutungo Muhozi yashakanye na nyakwigendera ari umwe gusa ari nawo Inkiko zabanje zemeje ko bagabana, indi

mitungo isigaye ni iya Nyirambarushimana kuko urega atabashije kugaragaza ibimenyetso byerekana ko bayishakanye.

Incamake y'icyemezo: 1. Igihe umuburanyi abona atujuje ibisabwa kugirango asabe gusubirishamo urubanza ingingo nshya, nta kimubuza gusaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, apfa kudakoresha izo nzira zombi icyarimwe bityo inzitizi yatanzwe yo kutakira ikirego ikaba nta shingiro.

2. Uwapfakaye udafite umwana yabyaranye na nyakwigendera bashyingiranwe utarongeye gushaka, agira uburenganzira ku mutungo wose bahahanye kugeza igihe na we azaba atakiriho, ariko iyo ahisemo kugabana uwo mutungo, afata ½ cyawo. Bityo Muhozi akaba agomba kugabana n'abazungura ba nyakwigendera umutungo bahahanye yabashije kugaragariza ibimenyetso gusa.

Ikirego cyo gusubirishamo urubanza nta shingiro gifite.

Amategeko yashingiweho:
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 12
Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 76, 77.

Amategeko yifashishijwe atagikoreshwa:
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'abashakanye impano n'izungura, ingingo ya 7, 8.

Nta manza zifashishijwe

Urubanza

I. IMITERERE Y'URUBANZA

[1] Muhozi Steven na Nyirambarushimana Triphine basezeranye mu buryo bwemewe n'amategeko ku wa 15/01/2015, basezerana uburyo bw'ivangamutungo muhahano; Nyirambarushimana Triphine akaba yari afite abana 4 yabyaye ahandi mbere yo gushyingiranwa na Muhozi Steven.

[2] Nyuma y'urupfu rwa Nyirambarushimana Triphine, Muhozi Steven ntiyumvikanye n'abana b'uwari umugore we ku bijyanye n'amerekezo y'umutungo, bituma atanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba guhabwa uruhare rwe ku mutungo bashakanye. Urubanza rwandit swe kuri Nº RC 00747/2018/TGI/NY GE, rucibwa ku wa 18/04/2019.

[3] Urukiko rwabanje gufata icyemezo ku nzitizi zari zatanzwe n'abaregwa, arizo inzitizi y'iburabubasha, n'inzitizi yo kuba Muhire Prince na Shema Puissance badafite ubushobozi bwo kuregwa kubera kutuzuza imyaka y'ubukure.

[4] Ku nzitizi y'iburabubasha, Urukiko rushingiye ku ngingo ya 21 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko[1], rwasanze kuba ikiburanwa ari izungura ku mutungo utimukanwa uherereye ahantu hatandukanye, urega afite ububasha bwo guhitamo Urukiko aregera kuko bimwe mu biburanwa biri mu ifasi yarwo, n'abaregwa bakaba batuye mu ifasi yarwo, ndetse n'ikiburanwa kikaba gifite agaciro karengeje miliyoni makumyabili (20.000.000 Frw); rwemeza ko rufite ububasha.

[5] Ku nzitizi yo kuba Muhire Prince na Shema Puissance badafit e ubushobozi bwo kuregwa, Urukiko rwasanze koko batujuje imyaka y'ubukure, rwemeza ko nta bushobozi bafite bwo kuregwa mu rubanza.

[6] Ku bijyanye n'urubanza mu mizi, Urukiko rwemeje ko:

a. Isambu ifite UPI: 5/01/10/05/871, iherereye mu Mudugudu wa Rubona, Akagari ka Nyarukombe, Umurenge wa Muyumbu, Akarere ka Rwamagana, Intara y'Iburasirazuba, igurishwa, amafaranga avuyemo ½ kigahabwa Muhozi Steven ikindi kigahabwa abazungura ba Nyirambarushimana Triphine.

b. Nta kigaragaza ko Muhozi Steven yagize uruhare mu iyubakwa ry'amazu ari mu kibanza gifite nimero y'agateganyo 107 giherereye mu Mudugudu w'Amizero, Akagari ka Kamaranzara, Umurenge wa Rilima, Akarere ka Bugesera, Intara y'Uburasirazuba; kimwe n'ikibanza gifite UPI: 10/03/10/01/3233 giherereye mu Mudugudu wa Kibaya, Akagari ka Kamashashi, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Umujyi wa Kigali.

c. Ibikoresho byo mu nzu aregera nta bimenyetso yabigaragarije.

[7] Muhozi Steven ntiyishimiye imikirize y'urubanza, ajurira mu Rukiko Rukuru, ubujurire bwe bwandikwa kuri Nº RCA 00190/2019/HC/KIG, asaba ko umutungo yahahanye na Nyirambarushimana Triphine ugabanywa hakurikijwe itegeko ry'izungura. Urubanza rwaciwe ku wa 15/10/2020, Urukiko rwemeza ko ubujurire bwe nta shingiro bufite. Urukiko Rukuru rwasobanuye ko uretse isambu ibaruye kuri UPI: 5/01/10/05/871 imwandit seho we na Nyirambarushimana Triphine, undi mutungo avuga ko bashakanye nta kimenyetso yabigaragarije.

[8] Ku wa 02/12/2020, Muhozi Steven yatanze ikirego mu Rukiko Rukuru asubirishamo urubanza ingingo nshya, cyandikwa kuri Nº RS/REV/RC 00001/2020/HC/KIG. Mu gihe urubanza rwari rutaracibwa, Muhozi Steven yandikiye Urukiko ku wa 02/09/2022 arumenyesha ko aretse urubanza. Ku wa 24/11/2022, Urukiko rwemeje ko ukureka urubanza kwe kwakiriwe.

[9] Muhozi Steven yari yarandikiye kandi Perezida w'Urukiko rw'Ubujurire ku wa 13/11/2020, asaba ko urubanza Nº RCA 00190/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 15/10/2020 rusubirwamo ku mpamvu z'akarengane.

[10] Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubusabe bwe, yohereje Perezida w'Urukiko rw'Ikirenga raporo asaba ko urubanza rwasubirwamo. Perezida w'Urukiko

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[1] Ingingo ya 21: « Imanza zerekeye umutungo utimukanwa ziregerwa mu rukiko rw'aho ibyo bintu biri.
Iyo ikintu kitimukanwa kiri mu mafasi menshi y'inkiko, Urukiko rufite ububasha bwo kukiburanisha ni ururi mu ifasi irimo igice kinini cy'icyo kiburanwa. Icyakora, urega afite ububasha bwo kwihitiramo kurega mu rukiko rwo mu ifasi iyo ari yo yose irimo igice cy'icyo kintu, iyo uregwa ariho atuye cyangwa abarizwa ».

rw’Ikirenga yemeje ko urubanza rwandikwa mu bitabo by’Urukiko rw’Ikirenga kugirango ruzongere ruburanishwe, ruhabwa Nº RS/INJUST/RC 00017/2022/SC.

[11] Iburanisha ry’urubanza ryabereye mu ruhame ku wa 17/07/2023, Muhozi Steven yunganiwe na Me Hakizimana Albert; Uwase Angélique na Tuyishimire Eric bahagarariwe na Me Amani Jean de Dieu, habanza gusuzumwa inzitizi yatanzwe n’abaregwa isaba kutakira ikirego gisaba gusubirishamo urubanza ku mpamvu z’akarengane, kuko Muhozi Steven yasubirishijemo urubanza ingingo nshya akanarusubirishamo ku mpamvu z’akarengane. Hanasuzumwe ikibazo cyagaragajwe na Muhozi Steven cy’uko yavukijwe uburenganzira bwo kwiburanira mu Rukiko Rukuru.

[12] Ku bijyanye n’inzitizi yo kuba Muhozi Steven yariyambaje inzira ebyiri, Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko igihe umuburanyi abona atujuje ibisabwa kugirango asabe gusubirishamo urubanza ingingo nshya, nta kimubuza gusaba ko urubanza rwe rusubirwamo ku mpamvu z’akarengane, apfa kudakoresha izo nzira zombi icyarimwe. Urukiko rwemeje kandi ko kuba Muhozi Steven yarabonye atujuje ibisabwa maze akareka ikirego cyo gusubirishamo urubanza ingingo nshya, akabyemererwa, bitaba impamvu yo kutakira ikirego yatanze cyo gusubirishamo urubanza ku mpamvu z’akarengane.

[13] Ku kibazo kijyanye no kumenya niba Muhozi Steven yaravukijwe uburenganzira bwo kwiburanira mu Rukiko Rukuru, mu cyemezo cyafatiwe mu ntebe, Urukiko rwasanze mu iburanisha ry’urubanza RCA 00190/2019/HC/KIG ryo ku wa 17/09/2020 mu Rukiko Rukuru, Abavoka ba Muhozi Steven barasabye ko urubanza rusubikwa kugirango azabe ahibereye ubwe kuko yari mu butumwa bw’amahoro, ariko Urukiko ntirwabifataho icyemezo ahubwo rubasaba kuvuga impamvu ze z’ubujurire.

[14] Urukiko rushingiye ku ngingo ya 85, igika cya 1, y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi[2]; no ku mirongo yatanzwe n’uru Rukiko[3], rwasanze Muhozi Steven yaravukijwe uburenganzira bw’ibanze bwo kwiregura no kunganirwa kandi bikaba ari ikibazo ndemyagihugu, rwemeza ko urubanza Nº RCA 00190/2019/HC/KIG ruteshwa agaciro, maze uru rubanza rugakomeza kuburanishwa hasuzumwa ubujurire wa Muhozi Steven mu Rukiko Rukuru.

[15] Urubanza rwongeye kuburanishwa mu ruhame ku wa 11/03/2024, Muhozi Steven yunganiwe na Me Hakizimana Albert; Uwase Angélique na Tuyishimire Eric bahagarariwe na Me Amani Jean de Dieu, habanza gusuzumwa inzitizi yari yatanzwe n’abaregwa mu Rukiko Rukuru, y’iburabubasha ry’Urukiko Rwisumbuye rwa Nyarugenge, kuko bavugaga ko umutungo uburanwa uri mu Murenge wa Muyumbu ho mu Karere ka Rwamagana, ukaba utari mu ifasi y’Urukiko rwaregewe, ndet se ukaba utagejeje ku gaciro ka 20.000.000 Frw.

[16] Mu cyemezo cyafatiwe mu ntebe, Urukiko rwashingiye ku ngingo 21 y’Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko, rusanga iyo nzitizi idafite ishingiro

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[2] Ingingo ya 85: « Umuburanyi afite uburenganzira bwo kwiburanira, guhagararirwa cyangwa kunganirwa na avoka mu nkiko ».

[3] Reba Inyandiko mvugo y’iburanisha ry’urubanza Nº RS/INJUST/ RCOM 00015/2022/SC haburana Gakire Pascal na Ndagijimana Viateur, yo ku wa 20/06/2023, paji ya 4; Urubanza Nº RS/INJUST/RP 00001/2019/SC haburana Habinshuti Eric n’Ubushinjacyaha, rwaciwe ku wa 23/12/2023, igika cya 17

kuko ikiburarwa ari izungura ku mutungo utimukanwa ufite agaciro karengeje 20.000.000 Frw kandi uherereye ahantu hatandukanye, urega akaba yari afite ububasha bwo guhitamo Urukiko aregera rwo mu ifasi iyo ariyo yose irimo igice cy'ikiburanwa cyangwa y'aho uregwa atuye cyangwa abarizwa.

[17] Ku birebana n'urubanza mu mizi, Urukiko rwakomeje iburanisha hasuzumwa ibijyanye no kumenya umutungo Muhozi Steven yahahanye na Nyirambarushimana Triphine n'uburyo wagabanwa, n'ibijyanye n'indishyi zasabwe n'ababuranyi.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya umutungo Muhozi Steven yahahanye na Nyirambarushimana Triphine n'uburyo wagabanwa

[18] [18] Muhozi Steven na Me Hakizimana Albert umwunganira bavuga ko mu mitungo iburanwa harimo umubaruyeho we na Nyirambarushimana Triphine, ari nawo Urukiko Rwisumbuye rwemeje ko yawugabana mu buryo bungana n'abandi bazungura ba Nyakwigendera, hakaba n'ibaruye kuri Nyirambarushimana Triphine wenyine ndetse n'indi itababaruyeho bose. Ku mutungo ubabaruyeho bombi, Muhozi Steven avuga ko wagombaga kugabanwamo kabiri, nawe akaza mu bazungura ba nyakwigendera nk'uko amategeko abiteganya. Bakavuga ko hashingirwa ku ngingo ya 13 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura[4].

[19] Ku bijyanye n'imitungo itababaruyeho bombi, Muhozi Steven n'umwunganira bavuga ko hari ubutaka Urukiko Rwisumbuye rwavuze ko burimo inzu kandi ntayirimo, buherereye mu Karere ka Bugesera, mu Murenge wa Rilima, Akagali ka Kamaranzara, Umudugudu w'Amizero, bwabonetse abana na Nyakwigendera. Avuga ko bubaruye kuri nimero y'agateganyo 107, bukaba bucyandit se kuri Nyirambarushimana Berchmas uhagarariwe na Nyirambarushimana Triphine.

[20] Basobanura ko ubwo butaka bwagabanywe mu buryo bw'izungura, akaba yarabyeretse Urukiko Rwisumbuye rukavuga ko nta bimenyetso kandi hari raporo y'Inzego z'Ibanze z'aho umutungo uherereye. Basaba ko uwo mutungo nawo wakwandikwa, ukabona kugabanwa kuko nta cyangombwa cya burundu cyasohotse.

[21] Bakomeza bavuga ko Muhozi Steven yagize uruhare mu gusana inzu Nyirambarushimana Triphine yari asanganywe mu kibanza gifite UPI: 10/03/10/01/3233, giherereye mu Mudugudu wa Kibaya, Akagari ka Kamashashi, Umurenge wa Nyarugunga, bigatuma agaciro kayo kiyongera, akaba asaba ko nayo yagabanwa ku buryo bw'izungura. Ibimenyetso batanga bigizwe n'igenagaciro n'amafoto y'uwo mutungo, historique ya compte yo muri Zigama CSS yari

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[4] 4 Ingingo ya 13: « Iyo ivangamutungo w'umuhahano risheshwe ku mpamvu z'ubutane cyangwa guhindura uburyo bw'imicungire y'umutungo, umutungo w'umuhahano ugabanywa abashyingiranywe mu buryo bungana hakurikijwe ibiteganywa mu ivangamutungo rusange, naho umutungo bwite wa buri wese akawugumana». Mu gika cyayo cya 2, iyo ngingo iteganya ko « iyo ivangamutungo w'umuhahano risheshwe ku mpamvu z'urupfu rw'umwe mu bashyingiranywe, umutungo usangiwe wegukanwa n'uwapfakaye naho umutungo uwapfuye yari yihariye ugacungwa n'uwapfakaye kugeza igihe izungura rikorewe » Mu gika cya 3, ivuga ko « Iyo iseswa ritewe n'impamvu zivugwa mu gika cya mbere cy'iyi ngingo, amategeko agenga igabana ry'umutungo mu gihe cy'ivangamutungo rusange niyo akurikizwa ku mutungo wari usangiwe ».

ahuriyeho na Nyirambarushimana Triphine, n’amasezerano bagurishirijeho inzu ya Muhozi Steven kugirango bashobore gusana inzu yavuzwe haruguru.

[22] Bavuga ko Urukiko rutigeze rusesengura ibyo bimenyetso ngo bihuzwe n’ibiteganywa n’ingingo ya 12 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ndetse n’iya 3 y’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo.

[23] Me Amani Jean de Dieu uhagarariye abaregwa avuga ko ibisabwa na Muhozi Steven nta shingiro bikwiye guhabwa, kuko umutungo yashoboye kugaragariza ibimenyetso ko awuhuriyeho na Nyakwigendera Nyirambarushimana Triphine ari ubaruye kuri UPI: 5/01/10/05/871, uherereye mu Karere ka Rwamagana, Umurenge wa Muyumbu, Akagari ka Nyarukombe, Umudugudu wa Rubona. Asobanura ko Muhozi Steven na Nyirambarushimana Triphine basezeranye uburyo bw'ivangamutungomuhahano, bivuze ko ibyo buri wese yabonye mbere y'uko basezerana ku wa 15/01/2015 ari umutungo we bwite, kandi ibyo bagomba kugabana bikaba ari ibyo bahahanye nyuma y'ishyingirwa.

[24] Avuga kandi ko imiburanire ya Muhozi Steven irimo gushaka kuriganya abana ba Nyakwigendera yamusigiye, akaba yarataye inshingano zo kubarera. Asobanura ko ikibanza gifite nimero y'agateganyo 107 kibaruye kuri Succession Nyirambarushimana Berchmas, giherereye mu Karere ka Bugesera, ari umutungo Nyirambarushimana Triphine ahuriyeho n'abandi bavandimwe, kandi n'umugabane yagira kuri iyo sambu watanzwe mbere y'uko asezerana na Muhozi Steven. Ni nako bimeze ku kibanza kibaruye kuri UPI: 1/03/10/01/3233 hamwe n’ikibaruye kuri UPI: 1/03/10/01/733, kuko Nyirambarushimana Triphine yabibonye mbere y'uko basezerana, bivuze ko nta burenganzira Muhozi Steven abifiteho.

[25] Ku bijyanye n’umutungowiyongereye agaciro, Me Amani Jean de Dieu uhagarariye abaregwa avuga ko amafaranga yakoreshejwe mu gusana yaturutse ku kibanza Nyirambarushimana Triphine yagurishije miliyoni zisaga zirindwi, yari yaraguze n'uwitwa Gasiribanse Muhamed, giherereye muri Kamashashi, mu Murenge wa Nyarugunga, Akarere ka Kicukiro; akaba yarakigurishije agamije gusana amazu ye. Avuga ko Muhozi Steven agomba kugaragaza amafaranga yatanze asana amazu atari afiteho uburenganzira.

[26] Yongeraho ko historique ya Banki itagaragaza icyo amafaranga yabikujwe yagiye gukoreshwa, kandi ko Muhozi Steven nk’umuntu wari warasezeranye ivangamutungo muhahano atari kubikuza amafaranga ngo ayashyire ku mutungo adafit eho uburenganzira.

Uko Urukiko rubibona

[27] Dosiye y’urubanza igaragaza ko Muhozi Steven yasezeranye na Nyirambarushimana Triphine mu buryo bwemewe n’amategeko ku wa 15/01/2015, ku bijyanye n’uburyo bw’imicungire y’umutungo wabo bagahitamo ivangamutungo w’umuhahano, nk’uko biri mu nyandiko y’ishyingirwa (Acte de mariage) Nº 13/15 Urukiko rwashyikirijwe na Muhozi Steven.

[28] Dosiye igaragaza kandi ko igihe bashyingirwaga, Nyirambarushimana Triphine yari afite abana 4 yabyaye ahandi, akaba nta mwana yabyaranye na Muhozi Steven, ndet se ko yaje gupfa

ku wa 21/04/2018, maze abana be ntibumvikane na Muhozi Steven ku bijyanye n'imitungo avuga ko babonye babana, irimo:

a) Ufite UPI: 5/01/10/05/871, uherereye mu Mudugudu wa Rubona, Akagari ka Nyarukombe, Umurenge wa Muyumbu, Akarere ka Rwamagana, Intara y'Iburasirazuba, wandit se kuri Muhozi Steven na Nyirambarushimana Triphine;

b) Ufite UPI: 10/03/10/01/3233, uherereye mu Mudugudu wa Kibaya, Akagari ka Kamashashi, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Umujyi wa Kigali, wandit se kuri NyirambarushimanaTriphine gusa;

c) Isambu ibaruye kuri N° 107 y'agateganyo, iri mu Mudugudu w'Amizero, Akagari ka Kamaranzara, Umurenge wa Rilima, Akarere ka Bugesera, Intara y'Iburasirazuba, wandit se kuri Successi on Nyirambarushimana Berchmas (Se wa Nyirambarushimana Triphine).

[29] Urukiko rusanga icyo Muhozi Steven asaba ari uruhare rwe mu mitungo avuga ko yahahanye na Nyirambarushimana Triphine, ikibazo gihari akaba ari icyo kumenya uwo mutungo bahahanye uwo ariwo ndetse n'uburyo wagabanwa. Rusanga icyo kibazo rwagisubiza mu bice bibiri, rukabanza kugaragaza umutungo Muhozi Steven yahahanye na Nyirambarushimana Triphine, rukabona gutanga igisubizo ku buryo uwo mutungo wagabanwa.

- **Ibijyanye no kumenya umutungo Muhozi Steven yahahanye na Nyirambarushimana Triphine**

[30] Urukiko rusanga igihe Muhozi Steven na Nyirambarushimana Triphine basezeranaga, ibijyanye n'imicungire y'umutungo w'abashakanye byaragengwaga n'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashakanye impano n'izungura, aho mu ngingo yaryo ya 7 ryasobanuraga ko « Ivangamutungo w'umuhahano ari amasezerano abashyingiranywe bagirana bumvikana gushyira hamwe ibyo buri wese yazanye igihe cy'ishyingirwa kugira ngo bibe iremezo ry'ibihahano, kimwe n'ibyo bungutse mu mibanire yabo, bakorera hamwe cyangwa buri wese ku giti cye, byaba impano cyangwa ibizungurwa ».

[31] Ingingo ya 8 y'iryo tegeko yateganyaga ko « Igihe cy'imihango y'ishyingirwa, abagiye gushyingirwa iyo batoranyije ivangamutungo w'umuhahano, bandika kandi bagaha umwandit si w'irangamimerere ibaruramutungo rishyizweho umukono wabo ryerekana umutungo n'imyenda buri wese ageneye iremezo ry'ibihahano. Ikintu cyose kitabaruwe ko ari rusange kiba ari icya nyiracyo ».

[32] Ku birebana n'uru rubanza, Urukiko rusanga igihe Muhozi Steven na Nyirambarushimana Triphine bashyingiranwaga, nta baruramutungo ryabaye ngo bagaragaze umutungo bageneye iremezo ry'ibihahano. Dosiye igaragaza ariko ko mu mitungo Muhozi Steven avuga ko bahahanye, hari ufite UPI: 5/01/10/05/871, uherereye mu Mudugudu wa Rubona, Akagari ka Nyarukombe, Umurenge wa Muyumbu, Akarere ka Rwamagana, Intara y'Iburasirazuba, icyangombwa cyawo kigaragaza ko umwanditseho we na Nyirambarushimana Triphine, kandi abaregwa nabo bakaba bemera ko uwo mutungo ari uw' umubyeyi wabo yahahanye na Muhozi Steven. Urukiko rusanga rero uyu mutungo ari uwo Muhozi Steven yahahanye na Nyirambarushimana Triphine.

[33] Ku birebana n'umutungo ufite UPI: 10/03/10/01/3233, ugizwe n'ikibanza kirimo inzu giherereye mu Mudugudu wa Kibaya, Akagari ka Kamashashi, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Urukiko rusanga icyangombwa cyawo kigaragaza ko wandit se kuri Nyirambarushimana Triphine gusa, kandi na Muhozi Steven akaba yemera ko bashyingiranywe asanzwe afite uwo mutungo, ndet se ukaba ariwe wandit seho gusa.

[34] Urukiko rusanga kuba Muhozi Steven avuga ko inzu yari muri icyo kibanza yari ishaje bakiyemeza kuyisana kugirango bayibanemo nk'umuryango, bigatuma agurisha inzu ye nayo yari iherereye muri uwo Mudugudu, amafaranga agakoreshwa mu gusana, ibyo atabasha kubigaragariza ibimenyetso, kuko nubwo agaragaza amasezerano Nyirambarushimana Triphine yakoze agurisha inzu ye (ya Muhozi) ku wa 20/03/2015, akanagaragaza hist orique bancaire ya compte bahuriyeho, muri ibi byose nta kigaragaza ko ayo mafaranga yakoreshejwe mu gusana inzu iri mu kibanza gifite UPI: 10/03/10/01/3233, dore ko nta n'inyandiko bigeze bakora ngo bagaragaze ingano y'ibyo Muhozi Steven yaba yarashyizeho mu gusana iyo nzu.

[35] Ingingo ya 12, igika cya 1, 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 « urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze uwarezwe aratsinda ». Urukiko rushingiye kuri iyi ngingo, rusanga Muhozi Steven atabasha kugaragaza uruhare yaba yaragize mu gusana cyangwa kongera agaciro k'inzu iri mu kibanza gifite UPI: 10/03/10/01/3233 nk'uko byavuzwe haruguru, kuko itigeze igenwa nk'iremezo ry'umutungo muhahano wabo, kandi ikaba yarakomeje ikandikwa kuri Nyirambarushimana Triphine wenyine, ndetse n'icyemezo cyo gusana cyo ku wa 06/07/2017 kikaba cyarasabwe na NyirambarushimanaTriphine kandi aba ari nawe ugihabwa. Rusanga rero iyo nzu ari iya Nyirambarushimana Triphine ku giti cye.

[36] Ku birebana n'isambu ibaruye kuri Nº 107, iri mu Mudugudu w'Amizero, Akagari ka Kamaranzara, Umurenge wa Rilima, Akarere ka Bugesera, Urukiko rusanga icyangombwa cy'agateganyo cyayo cyandit se kuri Succession Nyirambarushimana Berchmas, ihagarariwe na Nyirambarushimana Triphine, hakaba nta kigaragaza ko uyu yapfuye yarabonye uruhare rwe kuri uwo mutungo, kuko n'ubwo inyandiko yo ku wa 27/11/2018 yakozwe n'Ubuyobozi bw'Umudugudu w'Amizero, ikemezwa n'Umunyamabanga Nshingwabikorwa w'Akagari ka Kamaranzara, yemeza ko iyo sambu yari yaragabanywe ku wa 22/01/2017, itafatwa nk'ikimenyetso kuko atari inyandiko yakozwe habaye igikorwa nyirizina cyo kugabana hagati y'abazungura ba Nyirambarushimana Berchmas.

[37] Kuba kandi iyo nyandiko yarakozwe Nyirambarushimana Triphine yarapfuye, bisabwe na Muhozi Steven washakaga ikimenyetso, igakorwa nta n'undi muzungura uhari mu bavugwa ko bagabanye uwo mutungo, byongeye kandi iyo nyandiko ikaba itagaragaza igipande Nyirambarushimana Triphine yegukanye, cyangwa se ngo habe hari ikigaragaza ko yaba yarakiyandikishijeho, Urukiko rusanga iyo sambu itagomba kujya mu mutungo muhahano wa Muhozi Steven na Nyirambarushimana Triphine.

- **Uburyo umutungo Muhozi Steven yahahanye na Nyirambarushimana wagabanwa**

[38] Ingingo ya 77 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, iteganya ko « Ku bashyingiranywe bafitanye

amasezerano yo kuvanga umutungo w'umuhahano, izungura rikurikiza uburyo bukoreshwa mu ivangamutungo rusange ku mutungo w'umuhahano n'uburyo bukoreshwa ku ivanguramutungo risesuye ku mutungo wa buri wese hakurikijwe ibiteganywa n'iri tegeko ».

[39] Ingingo ya 76, agace ka 4 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 ryavuzwe, iteganya ko « iyo uwapfakaye nta mwana afitanye n'uwapfuye akongera gushaka afata kimwe cya kabiri (1/2) cy'umutungo nk'uburenganzira akura ku masezerano y'ivangamutungo, kimwe cya (1/2) gisigaye akakizungurana n'abazungura bandi b'uwapfuye. Muri icyo gihe agumana bitatu bya kane (3/4) by'umutungo w'uwapfuye. Iyo atongeye gushyingirwa yegukana umutungo wose akawurereramo abana uwapfuye yemeye cyangwa yemejwe n'amategeko, iyo bahari».

[40] Urukiko rusanga Muhozi Steven nk'uwapfakaye udafite umwana yabyaranye na Nyirambarushimana Triphine ndetse utarongeye gushaka, yari kugira uburenganzira ku mutungo wose yahahanye na Nyirambarushimana Triphine kugeza igihe nawe azaba atakiriho, ariko sibyo yasabye kuko arega bwa mbere mu Rukiko Rwisumbuye rwa Nyarugenge, yaregeye uruhare rwe ku mutungo yahahanye na Nyirambarushimana Triphine, agasaba ko ugabanwa, kandi mu bujurire yatanze mu Rukiko Rukuru nabwo yasabaga kugabana n'ubwo hoyongeyeho ko yanazungura kimwe n'abana ba Nyirambarushimana Triphine ku birebana n'umutungo bahahanye.

[41] Urukiko rusanga nk'uko byagaragaye mu bika bibanza ko umutungo Muhozi Steven yahahanye na Nyirambarushimana Triphine ari umwe gusa ufite UPI: 5/01/10/05/871, uherereye mu Mudugudu wa Rubona, Akagari ka Nyarukombe, Umurenge wa Muyumbu, Akarere ka Rwamagana, Intara y'Iburasirazuba ugizwe n'isambu irimo inzu, uwo mutungo agomba kuwugabana ku buryo bungana n'abana ba Nyirambarushimana Triphine, ukagurishwa, amafaranga avuyemo ½ kigahabwa Muhozi Steven, ikindi ½ kigahabwa abana ba nyakwigendera nk'uko byari byemejwe n'Urukiko Rwisumbuye rwa Nyarugenge.

[42] Urukiko rusanga ariko ibyo Muhozi Steven yasabye mu mwanzuro we w'ubujurire mu Rukiko Rukuru, ko umutungo yahahanye na Nyirambarushimana Triphine wagabanywa agahabwa ½ cyawo, ikindi ½ akakizungura kimwe n'abana be, ibyo atabihabwa kuko ibyo ari uburenganzira yahabwa mu gihe yaba afite umutungo wose awurereramo abana ba nyakwigendera maze akongera gushaka, ariko siko bimeze muri uru rubanza kuko Muhozi Steven atigeze yongera gushaka, ibyo akaba yaranabishimangiye mu nama ntegurarubanza mu Rukiko rw'Ikirenga.

2. Ibijyanye n'indishyi zasabwe n'ababuranyi

- Indishyi zasabwe mu Rukiko Rukuru

[43] Muhozi Steven na Me Hakizimana Albert umwunganira bavuga ko mu Rukiko Rukuru, yasabaga guhabwa indishyi yari yasabye mu Rukiko Rwisumbuye zingana na 1.870.000 Frw habariwemo igihembo cya Avoka, igarama n'indishyi z'akababaro. Basobanura ko igihembo cya Avoka basabaga kingana na 1.000.000 Frw. Ko mu bujurire bari basabye 500.000 Frw y'igihembo cya Avoka hamwe n'igarama ryatanzwe ajurira.

[44] Me Amani Jean de Dieu uhagarariye abaregwa avuga ko indishyi zisabwa na Muhozi Steven nta shingiro zikwiye guhabwa, kuko abana arega batigeze bamunaniza cyangwa ngo bange kugabana na we umutungo yahahanye na nyina. Akavuga ko ahubwo bitewe n'imanza abaregwa bashowemo bitari ngombwa, ndet se bakazishorwamo n'utari ukwiye kuzibashoramo, basaba ko

Muhozi Steven ategekwa kwishyura 2.000.000 Frw, akubiyemo 1.000.000 Frw y'igihembo cya Avoka, 500.000 Frw y'indishyi y'akababaro, na 500.000 Frw y'ikurikiranarubanza.

[45] Muhozi Steven yasubije ko izi ndishyi nta shingiro zifite, kuko yajurijwe n'uko atishimiye imikirize y'urubanza, kandi akaba abyemererwa n'amategeko.

Uko Urukiko rubibona

[46] Urukiko rusanga 500.000 Frw y'igihembo cya Avoka Muhozi Steven yasabaga mu Rukiko Rukuru atagomba kuyahabwa kuko atsindwa n'urubanza. Rugasanga ahubwo abaregwa bakwiye guhabwa igihembo cy'Avoka mu bushishozi bw'Urukiko kuko kuba Muhozi Steven yarajuririye urubanza byatumye bashaka Avoka ubaburanira, bityo bagahabwa 500.000 Frw y'igihembo cya Avoka agenwe mu bushishozi bw'Urukiko. Rusanga ariko izindi ndishyi basabye kuri urwo rwego baratabashije kuzisobanura, bityo bakaba ntazo bakwiye kugenerwa.

- **Indishyi zasabwe mu Rukiko rw'Ikirenga**

[47] Muhozi Steven na Me Hakizimana Albert umwunganira bavuga ko yashowe mu manza zitari ngombwa, abaregwa bakamuvutsa uburenganzira ku mutungo yahahanye n'umugore we nta mpamvu. Bavuga ko kubera iyo mpamvu, bashingiye ku ngingo za 111 na 112 z'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, no ku ngingo ya 34 y'amabwiriza Nº 01/2014 agena ibihembo mbonera by'Abavoka, basaba ko yishyurwa indishyi z'akababaro zingana na 1.000.000 Frw na 1.500.000 Frw y'igihembo cya Avoka.

[48] Me Amani Jean de Dieu uhagarariye abaregwa avuga ko ibisabwa n'urega nta shingiro byahabwa kuko ariwe watangije imanza, agashora abaregwa mu manza zitari ngombwa. Asaba ko abaregwa bagenerwa indishyi z'akababaro zingana na 1.000.000 Frw zo kuba barashowe mu manza nyuma yo gupfusha umubyeyi wabo, na 2.000.000 Frw akubiyemo 1.000.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka.

Uko Urukiko rubibona

[49] Urukiko rusanga Uwase Angélique na Tuyishimire Eric bagomba guhabwa amafaranga y'igihembo cya Avoka kuri uru rwego kuko aribo batsinze urubanza, mu bushishozi bw'Urukiko bakaba bagenewe 500.000 Frw kuko ayo basabye ari ikirenga, bakanahabwa 300.000 y'ikurikiranarubanza, ariko indishyi z'akababaro basaba bakaba batagomba kuzihabwa kuko batabashije gusobanura impamvu yazo.

III. ICYEMEZO CY'URUKIKO

[50] Rwemeje ko ubujurire Muhozi Steven yashyikirije Urukiko Rukuru budafit e ishingiro;

[51] Rwemeje ko imikirize y'urubanza Nº RC 00747/2018/TGI/NYGE, rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 18/04/2019 ihindut se gusa ku bijyanye n'indishyi;

[52] Rutegetse Muhozi Steven kwishyura Uwase Angélique na Tuyishimire Eric 500.000 Frw y'igihembo cya Avoka ku rwego rw'ubujurire; 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza kuri uru rwego.