NYIRANDIHANO v NEMEYABAHIZI

[Rwanda URUKIKO RW'IKIRENGA - RC 00002/2023/SC (Cyanzayire, P.J., Muhumuza na Kalihangabo, J.) 03 Gicurasi 2024]

Amategeko agenga imanza z'imbonezamubano – Umutungo - Umutungo utimukanwa - Umutungo utimukanwa ugizwe n'ubutaka kimwe n'ibyubatse cyangwa ibimera ku butaka, ibintu byimukanwa bihinduka ibitimukanwa kubera isano bifitanye kugirango bidatandukanywa mu buryo bwabangamira nyir'umutungo birimo umutungo wimukanwa wafatishijwe ku mutungo utimukanwa ku buryo buhoraho, n'umutungo wimukanwa ugenewe gutuma umutungo utimukanwa ushobora gokoreshwa, hakaba n'umutungo utimukanwa mu buryo bw'icyo ushingiyeho.

Amategeko agenga imanza z'imbonezamubano – Umutungo - Umutungo utimukanwa - Ukwiye kuba nyiri'umutungo utimukanwa - Inzu, ibikoresho byose biteye mu nzu nk'ibyo mu bwogero n'ubwiherero, n'ibindi byose biyiteyemo bigamije gutuma iyo nzu ikoreshwa, bifatwa nk'umutungo utimukanwa, bikaba ibya nyir'ubutaka biriho.

Amategeko agenga imiburanishirize y'imanza - Ivuguruzanya ry'imanza - Habaho kuvuguruzanya kw'imanza iyo hari ibyemezo bitandukanye by'inkiko bitagishoboye kujuririrwa, bikaba bidashobora kubangikanywa kandi bidashobora kurangirizwa rimwe, hagateshwa agaciro urubanza rwaciwe hirengangijwe amategeko cyangwa hadakurikijwe umurongo wari usanzwe uriho, hakagumishwaho urubanza rutanga ubutabera.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Muhoza Nyirandihano arega Nemeyabahizi asaba ko hahindurwa amasezerano y'ishyingirwa y'ivangamutungo rusange agahinduka amasezerano y'ivanguramutungo risesuye. Mu rubanza RC 00445/2019/TB/MUH, Urukiko rwemeje ko bacunga umutungo wabo mu buryo bw'amasezerano y'ivanganguramutungo risesuye bagabana imitungo aho Nyirandihano yahawe imitungo 5 naho Nemeyimana agahabwa imitungo irindwi. Hakomeje kuba imanza zitandukanye Nyirandihano avuga ko hari imitungo itaragabanywe ariko inkiko zikemeza ko ibyo avuga nta shingiro bifite, ajya no mu nzira z'akarengane nabwo bigaragara ko nta karengane yigeze agirirwa.

Nyuma Nemeyimana yatanze ikirego mu Rukiko rw'Ibanze rwa Muhoza asaba ko yatandukana na Nyirandihano kuko ngo yataye inshingano z'urugo agafata icyumba cye. Mu rubanza RC 00432/2020/TB/MUH, Urukiko rwasanze bagomba gutandukana ku makosa ya Nyirandihano, kuko yafashe icyumba cya wenyine akaba yarirengagije imwe mu nshingano z'abashakanye, akaba nta n'ikimenyetso yatanze kigaragaza ko ahozwa ku nkeke. Urukiko rwabagabanije imitungo ariko habaho imitungo irimo inzu yari yarahawe Nyirandihano bahindura uburyo bw'imicungire y'imitungo aho muri urwo rubanza rw'ubutane yahawe Nemeyimana ngo kuko yari irimo ibikoresho yakoreshaga mu kazi ke.

Nyirandihano yaje gutanga ikirego mu Rukiko rw'Ikirenga avuga ko hari imanza ebyiri zivuguruzanya agasaba ko zavanwaho. Urukiko rwakiriye icyo kirego maze rusuzuma ibibazo byo kumenya niba hari ukuvuguruzanya hagati y'urubanza Nº RC 00445/2019/TB/MUH n'urubanza Nº RC 00432/2020/TB/MUH nk'uko rwemejwe n'urubanza Nº RCA 00054/2022/TGI/MUS. Nyirandihano avuga ko imanza zivuguruzanya ari Urubanza RC 00445/2019/TB/MUH rwemeje ko imicungire y'umutungo wa Nemeyabahizi na Nyirandihano ihindutse ikava ku ivangamutungo rusange ikajya ku ivanguramutungo risesuye, rukaba rwaranabagabanyije imitungo 12

yagaragajwe muri urwo rubanza, harimo n'umutungo ugizwe n'inzu wahawe Nyirandihano ndetse n'urubanza Nº RC 00432/2020/TB/MUH rwavuze ko inyubako ya Entreprise NJB na dépôt zayo bikorerwa igenagaciro, Nemeyabahizi agaha Nyirandihano kimwe cya kabiri cy'amafaranga avuyemo, hanyuma we agatwara ibyo bikoresho by'izo nyubako bisigaye. Akomeza asaba ko izo manza zakurwaho kuko zirimo kuvuguruzanya.

Uregwa we asobanura ko kuba inyubako zigizwe na dépôts za Entreprise NJB zigomba kumuhereraho itaba impamvu yashingirwaho hemezwa ko imanza zivugwa n'urega zivuguruzanya, ko ahubwo icyabayeho ari amakosa y'imyandikire akaba yarakosowe urukiko rukavuga ko "inyubako ya Entreprise NJB na dépôts zayo bikorerwa igenagaciro, Nemeyabahizi agaha Nyirandihano ½ cy'amafaranga avuyemo, maze nawe agatwara ibyo bikoresho by'izo nyubako bisigaye. Akomeza asobanura ko icyo Nyirandihano agomba gusigarana ari ubutaka gusa naho ibikoresho buburiho bikaba ibye.

Incamake y'icyemezo: 1. Inzu, ibikoresho byose biteye mu nzu nk'ibyo mu bwogero n'ubwiherero, n'ibindi byose biyiteyemo bigamije gutuma iyo nzu ikoreshwa, bifatwa nk'umutungo utimukanwa, bikaba ibya nyir'ubutaka biriho bityo ibivugwa na Nemeyabahizi bikaba nta shingiro bifite.

2. Habaho kuvuguruzanya kw'imanza iyo hari ibyemezo bitandukanye by'inkiko bitagishoboye kujuririrwa, bikaba bidashobora kubangikanywa kandi bidashobora kurangirizwa rimwe, hagateshwa agaciro urubanza rwaciwe hirengangijwe amategeko cyangwa hadakurikijwe umurongo wari usanzwe uriho, hakagumishwaho urubanza rutanga ubutabera, bityo urubanza RC 00432/2020/TB/MUH n'urubanza RCA 00054/2022/TGI/MUS rwarwemeje zombi zivanweho kuko zirengagije amategeko, zikaba zaranafashe icyemezo ku mutungo wari waramaze gufatwaho icyemezo mu rundi rubanza.

Ikirego cyatanzwe cyo kuvuguruzanya kw'imanza gifite ishingiro.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda, ingingo ya 34;
Itegeko Nº 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 35
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 111.

Imanza zifashishijwe:
RC 00001/2023/SC, Rutayisire Jean de Dieu n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 22/12/2023;

Inyandiko z'abahanga zifashishijwe:
Igitabocy'urwunge rw'amategeko mbonezamubanoy'Abafaransa, ingingo ya 516, 517, 525;
François TERRÉ et Philippe SIMLER: Droit civil, Les biens, 10ème éd, Editions Dalloz, 2018, p 38,42, 43, 47;
Maret Carroll: The distinctionbetween movable andimmovable property; in https://www.snymans.com/advice/the-distinction-between-movable-and-immovable-property;

Senekal v Roodt 1983(2) SA 602 T, in https://www.coursehero.com/file/131506969/SENEKAL-v-ROODT-1983-2-SA-602-T-English-translationpdf;
Prachuya Sahu: Categorization of immovable and moveable property | Symbiosis Law School, Pune | 27th June, 2020; In LexForti Legal News Network, June 27, 2020, https://lexforti.com/legal-news/categorization-of-immovable- and-moveable-property;
Cabinet BRUZZO DUBOUCQ: La propriété du dessus et du dessous, conséquences du droit de propriété. https://bruzzodubucq.com/2017/04/25/la-propriete-du-dessus-et-du-dessous-consequences-du-droit-de- propriete;

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Muhoza, Nyirandihano Madeleine asaba Urukiko ko rwahindura uburyo bw'imicungire y'umutungo bari barahisemo we n'umugabo we Nemeyabahizi Jean Baptiste, bakava mu ivangamutungo rusange bari barasezeranye, bakajya mu ivanguramutungo risesuye kubera imicungire mibi y'umutungo ikorwa n'umugabo we. Bombi basezeranye mu buryo bwemewe n'amategeko ku wa 20/05/1989 mu cyahoze ari Komini Kigombe, Perefegitura ya Ruhengeri.

[2] Nemeyabahizi Jean Baptiste yireguye avuga ko imicungire mibi atari we yaturutseho, ariko avuga ko ubusabe bwa Nyirandihano Madeleine bwahabwa ishingiro, maze Urukiko rukemeza ko bava mu ivangamutungo rusange, bakajya mu ivanguramutungo risesuye.

[3] Mu rubanza Nº RC 00445/2019/TB/MUH[1] rwaciwe ku wa 04/09/2019, Urukiko rw'Ibanze rwa Muhoza rwanzuye ko ikirego cya Nyirandihano Madeleine gifite ishingiro, rwemeza ko uburyo bw'ivangamutungo rusange Nemeyabahizi Jean Baptiste na Nyirandihano Madeleine bari barahisemo buhindutse, bakaba bahisemo uburyo bw'ivanguramutungo risesuye, rutegeka ko Nyirandihano Madeleine ahabwa imitungo itanu (5)[2]; Naho NEMEYABAZI Jean Baptiste agahabwa imitungo irindwi (7)[3].

[4] Ku wa 01/10/2019, Nyirandihano Madeleine yatanze ikirego mu Rukiko rw'Ibanze rwa Muhoza asaba ko hasobanurwa urubanza Nº RC 00445/2019/TB/MUH, maze rukemeza ko imyenda atagizemo uruhare yakwishyurwa na Nemeyabahizi Jean Baptiste gusa, ndetse

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[1] Muri IECMS bigaragara ko urubanza rwanditswe kuri Nº RC 00445/2019/TB/MUH. Urukikomu kwandika urubanza, rwaribeshye aho kwandika nimero igaragara muri IECMS rwandika Nº RC 00421/2019/TB/MUH ndetse ntihagira n'umuburanyi usaba ko iryo kosa rikosorwa. Muri uru rubanza harakoreshwa nimero imwe ya mu rwego rwo gukuraho urujijo.
[2] Iyo mitungo ni iyi ikurikira: UPI 4/03/02/06/338 iherereye Nganzo-Rwebeya-Cyuve Musanze; UPI 4/03/02/04/3765 iherereye Gashangiro-Kabeza-Cyuve-Musanze; UPI 4/03/10/02/7509 iherereye Kanganwa-Garuka-Musanze-Musanze; UPI 4/03/10/02/7508 iherereye Kanganwa-Garuka-Musanze- Musanze; na UPI 4/03/10/02/1018 iherereye Kanganwa-Garuka-Musanze-Musanze.
[3] Iyo mitungo ni iyi ikurikira: UPI 4/03/02/04/3759 iherereye Gashangiro-Kabeza-Cyuve-Musanze; UPI 4/03/09/03/4841 iherereye Bugese-Mburabuturo-Muko-Musanze; UPI 4/03/09/03/4836 iherereye Bugese-Mburabuturo-Muko-Musanze; UPI 4/03/09/03/4839 iherereye Bugese-Mburabuturo-Muko-Musanze; UPI 4/03/09/03/4843 iherereye Bugese-Mburabuturo-Muko-Musanze; UPI 4/03/09/03/5179 iherereye Bugese-Mburabuturo-Muko-Musanze; UPI 4/03/12/02/637 iherereye Rwebeya-Kabeza-Nyange-Musanze.

rugategeka ko imitungo yatsindiye mu rubanza Nº RC 00445/2019/TB/MUH, itahungabanywa n'imyenda ndetse n'irangizwa ry'imanza zaburanywe n'umugabo we.

[5] Mu rubanza Nº RS/INTERT/RC 00006/2019/TB/MUH rwaciwe ku wa 11/10/2019, Urukiko rw'Ibanze rwa Muhoza rwasanze iyo myenda itaragiweho impaka mu rubanza rusabirwa gusobanurwa, rwanzura ko ikirego cya Nyirandihano Madeleine nta shingiro gifite, rwemeza ko nta kidasobanutse muri urwo rubanza.

[6] Ku wa 07/07/2020, Nyirandihano Madeleine yatanze ikirego mu Rukiko rw'Ibanze rwa Muhoza gitanzwe n'umuburanyi umwe (requête unilatérale), avuga ko mbere y'uko bahindura uburyo bw'imicungire y'umutungo w'abashyingiranywe bakajya mu ivanguramutungo risesuye, hari imitungo Nemeyabahizi Jean Baptiste yari yaragurishije ariko itarishyurwa yose, asaba ko mu kwishyura ubwishyu bwari busigaye, nawe yabugiraho uruhare, agahabwaho 50%.

[7] Mu rubanza Nº RC 00282/2020/TB/MUH rwaciwe ku wa 23/07/2020, Urukiko rw'Ibanze rwa Muhoza rwasanze ikirego cyatanzwe na Nyirandihano Madeleine gifite ishingiro, rwemeza ko mu kwishyura amafaranga yari asigaye ku masezerano y'ubugure yo ku wa 10/01/2017, hagomba gukurikizwa uburyo bw'ivanguramutungo risesuye, maze buri wese akishyurwa 50% agashyirwa kuri konti ye.

[8] Ku wa 28/07/2020, Nemeyabahizi Jean Baptiste yatanze ikirego mu Rukiko rw'Ibanze rwa Muhoza gitambambira urwo rubanza avuga ko atigeze arubamo umuburanyi kandi yari arufitemo inyungu, kuko icyaburanwaga ari ubwishyu bungana na 300.000.000 Frw bwari bwasigaye ku masezerano y'ubugure yo ku wa 10/01/2017, kandi ko uwo mutungo wari uwe ku giti cye.

[9] Mu rubanza Nº RC 00328/2020/TB/MUH rwaciwe ku wa 06/08/2020, Urukiko rw'Ibanze rwa Muhoza rwasanze ikirego ku itambama cyatanzwe na Nemeyabahizi Jean Baptiste gikwiye kwakirwa ariko rusanga nta shingiro gifite, kuko atagaragaje ibimenyetso by'uko uwo mutungo ari uwe bwite igihe bari mu rubanza ruhindura uburyo bw'imicungire y'umutungo wabo; rwanzura ko urubanza Nº RC 00282/2020/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ku wa 23/07/2020 rugumanye agaciro karwo.

[10] Nemeyabahizi Jean Baptiste yajuririye icyo cyemezo mu Rukiko Rwisumbuye rwa Musanze, avuga ko Urukiko rwabanje rwirengagije ibiteganywa n'ingingo ya 189 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kuko rutagombaga kuburanisha ikirego rwashyikirijwe nk'inyandiko nsobanura kirego itanzwe n'umuburanyi umwe (requête unilaterale) mu gihe icyaburanwaga harimo impaka zasabaga ko hahamagazwa undi muburanyi.

[11] Mu rubanza Nº RCA 00082/2020/TGI/MUS rwaciwe ku wa 25/08/2020, Urukiko Rwisumbuye rwa Musanze rwasanze mu iburanisha ry'urubanza Nº RC 00445/2019/TB/MUH ababuranyi baragaragaje urutonde rw'imitungo yose bagomba kugabana, ndetse banemeranya ko indi mitungo itarashyizwe kuri urwo rutonde iri mu manza igenerwa Nemeyabahizi Jean Baptiste, bityo ko natsinda izo manza bizaba ari inyungu ze, yaramuka anatsinzwe nabwo bikaba igihombo kuri we, kandi ko hazarebwa imitungo ye ku giti cye yahawe.

[12] Urukiko rwanzuye ko ubujurire bwa Nemeyabahizi Jean Baptiste bufite ishingiro, rwemeza ko ikirego gitambamira urubanza Nº RC 00282/2020/TB/MUH rwaciwe ku wa

23/07/2020 gifite ishingiro, rutegeka ko urubanza Nº RC 00328/2020/TB/MUH rwaciwe ku wa 06/08/2020 ruhindutse mu ngingo zarwo zose, naho urufite Nº RC 00282/2020/TB/MUH rwaciwe ku wa 23/07/2020 ruvanyweho; ruvuga ko Nyirandihano Madeleine agomba guha Nemeyabahizi Jean Baptiste 1.000.000 Frw akubiyemo igihembo cya Avoka wamwunganiye ku rwego rubanza no ku rw'ubujurire ndetse n'amafaranga y'ikurikiranarubanza, hiyongereyeho na 30.000 Frw y'ingwate y'amagarama.

[13] Nyirandihano Madeleine yiyambaje inzira y'akarengane, ariko haba Urukiko Rukuru, Urugereko rwa Musanze ndetse n'Urwego rw'Umuvunyi, izo nzego zombi zasanze ubwo busabe bwe nta shingiro bufite.

[14] Ku wa 18/09/2020, Nemeyabahizi Jean Baptiste yareze Nyirandihano Madeleine mu Rukiko rw'Ibanze rwa Muhoza, arusaba ko rwabatandukanya burundu. Impamvu yashingiyeho harimo kuba umugore bashakanye yarataye inshingano z'urugo, akajya kuba mu cyumba cya wenyine. Nyirandihano Madeleine yireguye yemera gutandukana burundu n'umugabo we, ariko asaba Urukiko ko rwakwemeza ko ubwo butane butanzwe ku makosa ya Nemeyabahizi Jean Baptiste kuko imibanire yabo yaranzwe no gusesagura umutungo ndetse no kumuhoza ku nkeke.

[15] Mu rubanza Nº RC 00432/2020/TB/MUH rwaciwe ku wa 15/03/2022, Urukiko rw'Ibanze rwa Muhoza rwasanze bagomba gutandukana ku makosa ya Nyirandihano Madeleine, kuko yafashe icyumba cya wenyine akaba yarirengagije imwe mu nshingano z'abashakanye, akaba nta n'ikimenyetso yatanze kigaragaza ko ahozwa ku nkeke.

[16] Mu kugabana imitungo itimukanwa, Urukiko rwasanze hagomba kubahirizwa uburyo bw'ivanguramutungo risesuye bahisemo[4], maze Nyirandihano Madeleine akagumana umutungo ugizwe na UPI 4/03/02/06/338, UPI 4/03/02/04/3765, UPI 4/03/10/02/7509, UPI 4/03/10/02/7508 na UPI 4/03/10/02/1018; naho NEMEYABAZI Jean Baptiste akagumana imitungo ibaruye kuri UPI 4/03/02/04/3759, UPI 4/03/09/03/4841, UPI 4/03/09/03/4836, UPI 4/03/09/03/4839, UPI 4/03/09/03/4843, UPI 4/03/09/03/5179 na UPI 4/03/12/02/637, runavuga ko NEMEYABAZI Jean Baptiste agomba kugumana imitungo yose itaravuzwe mu rubanza Nº RC 00445/2019/TB/MUH.

[17] Ku bijyanye n'umutungo wimukanwa, Urukiko rwasanze ibikoresho buri wese afite kandi akoresha mu buzima busanzwe no mu mwuga we agomba kubigumana.

[18] Urukiko rwasanze kandi kugira ngo Nemeyabahizi Jean Baptiste yegukane ibikoresho by'inyubako ya Entreprise NJB ndetse na dépôt zayo, bigomba gukorerwa igenagaciro maze agaha Nyirandihano Madeleine amafaranga angana na ½.

[19] Urukiko rwanzuye ko ikirego cyatanzwe na Nemeyabahizi Jean Baptiste gifite ishingiro, ruvuga ko atandukanye burundu na Nyirandihano Madeleine, ko abana bose babyaranye aribo bakwihitiramo aho bashaka kuba kuko bose bakuze, rwemeza ko umutungo utimukanwa utaravuzwe mu rubanza Nº RC 00445/2019/TB/MUH ugomba guherera kuri Nemeyabazi Jean Baptiste, rutegeka ko mbere y'uko Nemeyabahizi Jean Baptiste yegukana inyubako ya Entreprise NJB na dépôt zayo agomba kubanza kubikorera igenagaciro, maze agaha Nyirandihano Madeleine ½ cy'agaciro kabyo.

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[4] Reba mu rubanza no RC 00445/2019/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ku wa 04/09/2019.

[20] Nyirandihano Madeleine yajuririye Urukiko Rwisumbuye rwa Musanze arusaba ko rwakwemeza ko ubutane butanzwe ku makosa ya Nemeyabahizi Jean Baptiste, rukanategeka ko imutungo yasigaye itagabanywe mu rubanza Nº RC 00445/2019/TB/MUH ku wa 04/09/2019, ubwo haburanwaga ikirego cyo guhindura uburyo bwo gucunga umutungo w'abashakanye, yayigiraho uruhare rungana na 50%. Nemeyabahizi Jean Baptiste yireguye avuga ko nta hohoterwa iryo ariryo ryose yakoreye umugore we kandi ko atigeze yifuza gutandukana nawe.

[21] Mu rubanza Nº RCA 00054/2022/TGI/MUS rwaciwe ku wa 16/05/2023, Urukiko Rwisumbuye rwa Musanze rwasanze nta bimenyetso Nyirandihano Madeleine agaragaza byatuma ubutane butangwa ku makosa ya Nemeyabahizi, cyangwa ngo ruhindure ibijyanye n'imitungo itimukanwa kuko iyo bagabanyijwe ari we wari wayigaragaje kandi ikaba yaramaze gufatwaho umwanzuro mu rubanza Nº RC 00445/2019/TB/MUH rwahinduye uburyo bw'imicungire y'umutungo w'abashakanye.

[22] Rwasanze ariko mu rubanza rujuririrwa Urukiko rw'Ibanze rwa Muhoza rwarakoze ikosa aho kwandika ko Nemeyabahizi Jean Baptiste atwara ibikoresho by'inyubako bisigaye, nk'uko byari byasobanuwe, rwandika ko atwara izo nyubako zisigaye bityo rero bikaba bigomba gukosorwa kuko bidahindura icyemezo.

[23] Urukiko rwanzuye ko ubujurire bwa Nyirandihano Madeleine nta shingiro bufite, rwemeza ko amakosa y'imyandikire yakozwe mu rubanza Nº RC 00432/2020/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ku wa 15/03/2022, akosowe, hakaba hagomba kwandikwa ko: "RUTEGETSE ko ''inyubako ya Entreprise NJB na depo zayo bikorerwa igenagaciro, Nemeyabahizi agaha Nyirandihano ½ cy'amafaranga avuyemo, Nemeyabahizi, agatwara ibyo bikoresho by'izo nyubako bisigaye'', ruvuga ko urubanza Nº RC 00432/2020/TB/MUH ruhindutse gusa ku bijyanye n'amakosa y'imyandikire yaregewe.

[24] Ku wa 30/11/2023, Nyirandihano Madeleine yatanze ikirego mu Rukiko rw'Ikirenga, arusaba ko rwakemura ikibazo cy'ivuguruzanya ry'imanza rigaragara mu rubanza Nº RC 00445/2019/TB/MUH rwaciwe ku wa 04/09/2019 ndetse n'urubanza Nº RC 00432/2020/TB/MUH rwaciwe ku wa 15/03/2022 nk'uko rwemejwe n'urubanza Nº RCA00054/2022/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 16/05/2023. Asobanura ko ivuguruzanya rigaragara muri izo manza, ari uko mu rubanza no RC 00445/2019/TB/MUH rwerekeranye no guhindura uburyo bwo gucunga umutungo w'abashakanye, hari umutungo yagenewe, nyuma mu rubanza Nº RC 00432/2020/TB/MUH ndetse na Nº RCA 00054/2022/TGI/MUS zerekeye ubutane, uwo mutungo urongera uhabwa Nemeyabahizi Jean Baptiste.

[25] Hashingiwe ku murongo watanzwe mu rubanza rubanziriza urundi Nº RC 00001/2023/SC[5] rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2023, uvuga ko Urukiko rw'Ikirenga ari rwo rufite ububasha bwo gukemura ukuvuguruzanya kuri hagati y'imanza zaciwe ku rwego rwa nyuma, ikirego cyanditswe mu bitabo by'Urukiko, gihabwa Nº RC 00002/2023/SC.

[26] Iburanisha ry'urubanza ryashyizwe ku wa 11/03/2024, Urukiko ruhamagaje urubanza rusanga ababuranyi bitabye, Nyirandihano Madeleine ahagarariwe na Twahirwa Jean Claude,

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[5] Urubanza N° RC 00001/2023/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 22/12/2023, haburana Ruta yisire Jean de Dieu n'abandi p7

umuhungu we yahaye ububasha bwo kumuburanira, akaba yunganirwa na Me Rukarishya Ngenda Philemon hamwe na Me Ngarambe Lambert, naho Nemeyabahizi Jean Baptiste yunganirwa na Me Ndayishimiye Jean Paul, ababuranyi bajya impaka ku bibazo bikurikira:

- Kumenya niba hari ukuvuguruzanya hagati y'urubanza N^{o} RC 00445/2019/TB/MUH n'urubanza N^{o} RC 00432/2020/TB/MUH nk'uko rwemejwe n'urubanza N^{o} RCA 00054/2022/TGI/MUS;
- Kumenya niba urubanza N^{o} RC 00432/2020/TB/MUH n'urubanza N^{o} RCA 00054/2022/TGI/MUS zikwiriye kuvaho;
- Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1. Kumenya niba hari ukuvuguruzanya hagati y'urubanza Nº RC 00445/2019/TB/MUH n'urubanza Nº RC 00432/2020/TB/MUH nk'uko rwemejwe n'urubanza Nº RCA 00054/2022/TGI/MUS

[27] Twahirwa Jean Claude, umuhungu wa Nyirandihano Madeleine hamwe na Me Rukarishya Ngenda Philemon na Me Ngarambe Lambert bamwunganira , bavuga ko urubanza N^{o} RC 00445/2019/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ku wa 04/09/2019 rwemeje ko Nemeyabahizi Jean Baptiste na Nyirandihano Madeleine bahinduye uburyo bwo gucunga umutungo wabo, maze rwemeza ko bava mu buryo bw'ivangamutungo rusange, bakajya mu buryo bw'ivanguramutungo risesuye, runategeka ko bagabana imitungo 12, Nemeyabahizi Jean Baptiste ahabwa imitungo irindwi (7) naho Nyirandihano Madeleine ahabwa itanu (5).

[28] Bavuga ko Nyirandihano Madeleine yongeye gutanga ikirego gisobanuza urubanza no RC 00445/2019/TB/MUH, kugira ngo Urukiko rusobanure ibijyanye n'imitungo itarafashweho icyemezo muri urwo rubanza, harimo amadeni ndetse n'indi mitungo itaragize uwo ihabwa mu rubanza rwasabaga guhindura uburyo bwo gucunga umutungo w'abashakanye. Ku wa 11/10/2019, Urukiko rw'Ibanze rwa Muhoza rwasanze iyo ngingo itarigeze igarukwaho mu iburanisha ry'urubanza rusabirwa gusobanuzwa, rwanzura ko icyo kirego rutagifataho icyemezo, rwemeza ko nta kidasobanutse muri urwo rubanza.

[29] Bavuga ko ku wa 04/11/2020, umuhesha w'inkiko w'umwuga witwa Uwamahoro Marie Rose yarangije urubanza N^{o} RC 00445/2019/TB/MUH, buri wese ahabwa imitungo yagenewe, uretse itaravuzweho.

[30] Bakomeza bavuga ko Nemeyabahizi Jean Baptiste yatanze ikirego asaba ko yatandukana burundu na Nyirandihano Madeleine, gihabwa N^{o} RC 00432/2020/TB/MUH. Ku wa 15/03/2022 Urukiko rw'Ibanze rwa Muhoza rwemeje ko batandukana burundu, ruvuga ko inyubako zigizwe na dépôts za Entreprise NJB zigomba gueherereza kuri Nemeyabahizi Jean Baptiste, ibyo rubyemeza rwirengagije ko mu icibwa ry'urubanza N^{o} RC 00445/2019/TB/MUH, uwo mutungo ubaruye kuri UPI: 4/03/02/06/338 wari waramaze guhabwa Nyirandihano Madeleine, runategeka ko imitungo yose yasigaye itaragaragajwe mu rubanza N^{o} RC 00445/2019/TB/MUH nayo ihabwa Nemeyabahizi Jean Baptiste, kandi nyamara itarigeze igarukwaho muri urwo rubanza.

[31] Basoza kuri iyi ngingo bavuga ko mu gihe hagumaho urubanza Nº RC 00445/2019/TB/MUH ndetse n'urubanza Nº RC 00432/2020/TB/MUH nk'uko rwemejwe n'urubanza Nº RCA 00054/2022/TGI/MUS, irangizwa ryazo ritashoboka kuko zivuguruzanya; ibyo kandi bikaba byanagira ingaruka ku zindi manza bagifitanye.

[32] Mu iburanisha ryo ku wa 02/04/2024, basobanuye ko ibyiswe ibikoresho bya NJB Nemeyabahizi Jean Baptiste asaba guhabwa ari "annexes" z'inzu nkuru (principal) ku buryo bijyana n'umutungo utimukanwa Nyirandihano Madeleine yagenewe.

[33] Nemeyabahizi Jean Baptiste na Me Ndayishimiye Jean Paul umwunganira bavuga ko kuba Urukiko rw'Ibanze rwa Muhoza rwaremeje ko inyubako zigizwe na dépôts za Entreprise NJB zigomba kumuhereraho itaba impamvu yashingirwaho hemezwa ko imanza zivugwa na Nyirandihano Madeleine zivuguruzanya, kuko icyo kibazo cyagarutsweho mu rubanza Nº RCA 00054/2022/TGI/MUS rwaciwe ku wa 16/05/2023, ubwo Urukiko Rwisumbuye rwa Musanze rwemezaga ko habayeho amakosa y'imyandikire mu rubanza rwajuririrwaga, maze ruyakosora ruvuga ko "inyubako ya Entreprise NJB na dépôts zayo bikorerwa igenagaciro, Nemeyabahizi Jean Baptiste agaha Nyirandihano Madeleine ½ cy'amafaranga avuyemo, maze nawe (Nemeyabahizi Jean Baptiste) agatwara ibyo bikoresho by'izo nyubako bisigaye".

[34] Bavuga kandi ko ivuguruzanya hagati y'izo manza ritashoboka kuko rumwe muri zo arirwo Nº RC 00445/2019/TB/MUH rwamaze kurangizwa. Bagaragaza kandi ko kwimura bimwe mu bikoresho yahawe bikava mu mutungo wagenewe Nyirandihano Madeleine, bitamubuza gukomeza kuwutunga, kandi ko nawe ubwe yemera ko ibikoresho byimukanwa byakoreshejwe hagamijwe kugira ngo Entreprise NJB ikore, akaba adakwiriye kuvuga ko izo manza zidashobora kurangizwa.

[35] Basoza kuri iyi ngingo bavuga ko mu rubanza rw'ubutane, Urukiko rwanzuye ko buri muntu agumana imitungo yari yarahawe nyuma y'urubanza rwasabaga guhindura uburyo bwo gucunga umutungo w'abashyingiranywe, bityo ko ibivugwa na Nyirandihano Madeleine ko izo manza zivuguruzanya kubera ko harimo ikibazo cy'igaraje na dépôt, ibyo atari ukuri kuko atigeze ahakana ko uwo mutungo ari uwa Nemeyabahizi Jean Baptiste, akaba ari nayo mpamvu yemerewe kuwimukana.

[36] Mu iburanisha ryo ku wa 02/04/2024, Nemeyabahizi yagaragaje ko ibikoresho yahawe n'Urukiko mu rubanza rw'ubutane ari ibigega bibiri by'amazi, imashini ya "jacuzzi" inzu ya dépôt, n'iy'igaraji, izi nzu zombi akavuga ko zitandukanye cyane n'inzu nkuru, kandi ko mu rubanza rw'ivanguramutungo risesuye, Nyirandihano Madeleine atigeze avuga ibiri mu kibanza UPI 4/03/02/06/338 kuko babanaga mu nzu.

[37] Urukiko rwababajije imitungo itaravuzwe mu rubanza rw'ivanguramutungo risesuye iyo ari yo, bavuga ko hari inzu imwe y'ubucuruzi, n'ibibanza 2 kandi hari ibyari mu ngwate ya banki n'ibyagurishijwe kugira ngo hishyurwe imyenda. Babajijwe aho muri urwo rubanza Nyirandihano Madeleine yiyemereye cyangwa se yivugiye ko imitungo itaravuzwe muri urwo rubanza izaherezwa kuri Nemeyabahizi Jean Baptiste, bavuga ko ari mu mwanzuro watanzwe na Nyirandihano Madeleine asaba guhindura ivangamutungo rusange.

UKO URUKIKO RUBIBONA

[38] Imanza Nyirandihano Madeleine avuga ko zivuguruzanya ni:

- Urubanza N° RC 00445/2019/TB/MUH rwemeje ko imicungire y'umutungo wa Nemeyabahizi Jean Baptiste na Nyirandihano Madeleine ihindutse ikava ku ivangamutungo rusange ikajya ku ivanguramutungo risesuye, rukaba rwaranabagabanyije imitungo 12 yagaragajwe muri urwo rubanza, harimo n'umutungo ubaruye kuri UPI 4/03/02/06/338 wahawe Nyirandihano Madeleine.

- Urubanza N° RC 00432/2020/TB/MUH rwaje kwemezwa n'urubanza N° RCA 00054/2022/TGI/MUS rwavuze ko:

  o Inyubako ya Entreprise NJB na dépôt zayo bikorerwa igenagaciro, Nemeyabahizi Jean Baptiste agaha Nyirandihano Madeleine kimwe cya kabiri cy'amafaranga avuyemo, Nemeyabahizi Jean Baptiste agatwara ibyo bikoresho by'izo nyubako bisigaye.

  o Imitungo yose yasigaye itaragaragajwe mu rubanza N° RC 00445/2019/TB/MUH ihabwa Nemeyabahizi Jean Baptiste.

[39] Urukiko rugomba gusuzuma niba hari ivuguruzanya hagati y'izo manza rishingiye ku kuba hari imitungo yeguriwe Nyirandihano Madeleine mu rubanza rw'ivanguramutungo, ikongera kwegurirwa Nemeyabahizi Jean Baptiste mu rubanza rw'ubutane, no ku bijyanye n'uko imitungo itaragaragajwe mu rubanza rw'ivanguramutungo risesuye iherera kuri Nemeyabahizi Jean Baptiste.

[40] Mu rubanza Rutayisire Jean de Dieu yaburanaga na Mukankurikiyimana Béatrice n'abandi[6], Urukiko rw'Ikirenga, rwifashishije abahanga mu mategeko batandukanye rwagaragaje ibi bikurikira ku bijyanye n'ivuguruzanya ry'imanza:

o Haba kuvuguruzanya kw'imanza iyo hari ibyemezo bitandukanye by'inkiko bitagishoboye kujuririrwa kandi bikaba bidashobora kurangizwa icyarimwe;

o Ibyo byemezo biramutse bigumyeho, byagira ingaruka z'uko ababuranyi batabona ubutabera bakeneye (déni de justice);

o Kugira ngo izo mpungenge ziveho, inkiko zaregewe ko hari imanza zivuguruzanya zigomba gusuzuma urubanza cyangwa imanza zikwiye kuvaho kugira ngo hubahirizwe uburenganzira bw'ababuranyi;

o Iyo ukuvuguruzanya gushingiye ku kuba hari urundi rubanza rwaciwe mbere ku mpamvu zimwe, ku kiburanwa kimwe, hagati y'ababuranyi, bamwe kandi rwabaye ndakuka (autorité de la chose jugée), hakurwaho urubanza rwa kabiri hakagumaho urwa mbere rwabaye ndakuka;

o Iyo ukuvuguruzanya gushingiye ku kuba hari imanza ebyiri zidashobora kubangikanywa (deux décisions inconciliables) kandi zidashobora kurangirizwa rimwe, hateshwa agaciro rumwe muri izo manza cyangwa zombi.

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[6] Urubanza N° RC 00001/2023/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 22/12/2023, haburana Rutayisire Jean de Dieu n'abandi igika cya 28

A. Ku bijyanye n'ivuguruzanya rishingiye ku kuba hari imitungo yeguriwe Nyirandihano Madeleine mu rubanza rw'ivanguramutungo, ikongera kwegurirwa Nemeyabahizi Jean Baptiste mu rubanza rw'ubutane

[41] Mu iburanisha ryo ku wa 02/04/2024, ababuranyi basobanujwe ibikoresho byavugwaga mu rubanza N° RC 00432/2020/TB/MUH rwaje kwemezwa n'urubanza N° RCA 00054/2022/TGI/MUS maze Nemeyabahizi Jean Baptiste avuga ko ari ibi bikurikira yatangiye amafoto:

- o Ibigega bibiri by'amazi (byubakiye ku nzu nkuru Nyirandihano Madeleine abamo);
- o "Jacuzzi" iri mu nzu nkuru Nyirandihano Madeleine abamo;
- o Inzu y'ububiko (dépôt);
- o Inzu y'igaraji.

[42] N'ubwo Urukiko Rwisumbuye rwa Musanze rwavuze ko ari ibikoresho bya Entreprise NJB, Urukiko rurasanga ibyo byitwa ibikoresho biri mu kibanza gifite UPI: 4/03/02/06/338 cyahawe Nyirandihano Madeleine mu rubanza N° RC 00445/2019/TB/MUH rwemeje ivanguramutungo risesuye, bikaba bigizwe n'inyubako ziri kuri ubwo butaka n'ibikoresho byubakiye cyangwa biri muri uwo mutungo utimukanwa nk'uko bigaragara mu mamafoto ababuranyi batanze, ndetse na Nemeyabahizi Jean Baptiste akabishimangira mu iburanisha. Nemeyabahizi Jean Baptiste agaragaza ko mu rubanza rw'ivanguramutungo risesuye Nyirandihano Madeleine yahawe umutungo w'ubutaka gusa kuko ibindi bitavuzweho muri urwo rubanza.

[43] Mu gusuzuma iki kibazo ni ngombwa kureba niba ibyo "bindi" koko ari ibikoresho byimukanwa Umucamanza yashoboraga kwegurira Nemeyabahizi Jean Baptiste mu rubanza rw'ubutane ntibibangamire urubanza rwemeje ivanguramutungo risesuye, akaba ari ngombwa kubanza gusuzuma ibijyanye n'igisobanuro cy'umutungo utimukanwa (les immeubles) ndetse n'uba ari nyir'imitungo iri ku mutungo utimukanwa, hakabona kurebwa niba hari ivuguruzanya hagati y'urubanza N° RC 00445/2019/TB/MUH n'urubanza N° RC 00432/2020/TB/MUH nk'uko rwemejwe n'urubanza N° RCA 00054/2022/TGI/MUS .

a. Ibijyanye n'igisobanuro cy'umutungo utimukanwa

[44] Ubundi ibijyanye n'umutungo muri rusange (les biens) byateganywaga n'Itegeko ryo ku wa 31 Nyakanga 1912 ryerekeye ibintu n'umutungo nk'uko ryahinduwe kugeza ubu, byategetswe ko rikurikizwa mu Rwanda na O.R.U, N° 8 yo ku wa 8 werurwe 1927[7] ubu ritagikurikizwa. Kuko nta tegeko ryarisimbuye ngo ribisobanure, ni yo mpamvu mu rwego rwo kubyumva neza Urukiko ruri bwifashishe ibikorwa mu bindi bihugu n'inyandiko z'abahanga mu mategeko.

[45] Itegeko ry'Abafaransa risobanura ko imitungo iri mu byiciro bibiri, umutungo wimukanwa n'umutungo utimukanwa (tous les biens sont meubles ou immeubles)[8]; naho mu ngingo za 517 - 526, rikagaragaza ibyiciro bitatu bigize umutungo utimukanwa ari byo umutungo utimukanwa mu

[7] Ryahagaritswe gukurikizwa mu Rwanda n'itegeko Nº 020/2019 ryo ku wa 22/08/2019 rikuraho amategeko yose yashyizweho mbere y'itariki y'ubwigenge

[8] Ingingoya 516 y'igitabocy'urwunge rw'amategeko mbonezamubanoy'Abafaransa (code civil français)

buryo bwa kamere (par nature), mu buryo bw'icyo ushingiyeho (par l'objet auquel il s'applique) no mu buryo bw'icyo ugenewe gukoreshwa (par destination)[9]. Bashingiye kuri izo ngingo, abahanga mu by'amategeko François TERRÉ na Philippe Simler babisobanura mu buryo bukurikira:

1. Umutungo utimukanwa mu buryo bwa kamere (immeuble par nature): ugizwe n'ubutaka n'ibifashe ku butaka (cette catégorie comprend le sol et tout ce qui adhère au sol). Ibifashe ku butaka bagaragaza ko ari ibimera n'inyubako, kandi ko inyubako ari ikintu cyose cyubatse ku butaka (il s'agit des végétaux et des constructions)[10].

2. Umutungo utimukanwa mu buryo bw'icyo ushingiyeho (immeuble par l'objet auquel il s'applique): iki cyiciro kibamo uburenganzira bujyanye n'umutungo utimukanwa (usufruit, emphytheose, servitudes,…), ubugwate, cyangwa se umwenda[11].

3. Umutungo utimukanwa mu buryo bw'icyo ugenewe gukoreshwa (immeuble par destination): ni ikintu cyimukanwa gihindurwa ikitimukanwa kubera isano gifitanye n'umutungo utimukanwa mu buryo bwa kamere nk'igikoresho cyawo, (…) icyo kintu kikagirwa gutyo kugira ngo kidatandukanywa n'umutungo utimukanwa mu buryo bubangamira nyir'umutungo. (il s'agit des choses mobilières considérées fictivement comme des immeubles en raison du lien qui les unit à un immeuble par nature don't ils constituent l'accessoire, … Cette solution rend plus étroit le lien qui attache ces objets à l'immeuble et empêche qu'ils en soient séparés au détriment du propriétaire)[12]. Batanga urugero ku bikoresho by'ubuhinzi (instruments aratoires) bavuga ko bidashobora gufatirwa bitandukanyijwe n'ubutaka bikoreshwaho, kuko byabangamira ukububyaza umusaruro[13].

[46] Aba bahanga bagaragaza ko kugira ngo umutungo wimukanwa uhinduke utimukanwa mu buryo bw'icyo ugenewe gukoreshwa, hagomba ibintu bibiri ari byo (i) kuba iyo mitungo yombi (uwimukanwa n'utimukanwa) ari iy'umuntu umwe N° (ii) kuba yarahujwe mu buryo buteganywa n'amategeko bukurikira:

4. Kuba uwo mutungo wimukanwa ugenewe gutuma umutungo utimukanwa ushobora gokoreshwa (affectation du meuble au service ou à l'exploitation d'un fonds) nk'ibikoresho bigenewe gukoreshwa mu buhinzi, mu nganda, mu bucuruzi ndetse no mu mazu (batanga ingero z'ibikoresho byo mu bwogero, imfunguzo z'inzu n'ibindi);

5. Kuba uwo mutungo wimukanwa ufashe ku mutungo utimukanwa ku buryo buhoraho (attache matérielle des meubles à perpetuelle demeure) hakoreshejwe ibintu nka sima bituma igikoresho gifata mu buryo buhoraho ku mutungo utimukanwa, ku buryo kugikuraho byacyangiza cyangwa se bikangiza umutungo utimukanwa gifasheho[14].

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[9] Ingingo ya 517 y'icyo gitabo: "Les biens sont immeubles, ou par leur nature, ou par leur destination, ou par l'objet auquel ils s'appliquent" (code civil français)
[10] François TERRÉ et Philippe SIMLER: Droit civil, Les biens, 10è éd, Editions Dalloz, 2018, p38ss
[11] Ibidem, P. 47
[12] Ibidem, P. 42
[13] "Les instruments aratoires ne pourront être saisis mobilièrement, idépendamentdu fonds auquel ils sont affectés, si non l'exploitation du fonds serait paralysée"; Ibidem
[14] "à l'article 525 du code civil sont précisés des procédés d'attache faisant présumer l'intention dupropriétaire: 1) le scellement en plâtre ou à chaux ou à ciment, ou tout autre procédé tel que les meubles ne puissent être détachés sans être fracturés et détériorés, ou sans briser ou détériorer la partie du fond à laquelle ils sont attachés"; Ibidem p.43

[47] Maret CARROLL we yanditse ko umutungo utimukanwa ugizwe n'ubutaka, inyubako ziburiho n'ibikoresho byabwongeweho byose. Avuga ko n'ibikoresho byafatishijwe ku mutungo utimukanwa ku buryo buhoraho, byometsweho cyangwa byateweho, cyangwa se ibyawushyizwemo mu buryo bwo kuwongerera agaciro nabyo ari umutungo utimukanwa. Avuga ko ibintu nk'utubati dufashe mu nzu, ibikoresho by'ubwogero n'imisarani, indorerwamo cyangwa se utuzu tw'abashinzwe umutekano byose byubakiye mu nzu biba ari umutungo utimukanwa. (Immovable property can be defined as the land, all buildings on the land and all permanent improvements to the land. This includes movable objects that are permanently fixed, glued, or cemented to the land or improvements on the land by means of accession. Built-in cupboards, fitted bathroom, mirrors and security gates all form part of immovable property)[15].

[48] Urukiko rwo muri Afurika y'Epfo narwo rwemeje iri hame mu rubanza Senekal v Roodt 1983(2) SA 602 T, aho uwaguze inzu yareze uwayimugurishije gukuramo utubati tw'ibyuma n'intebe byari bifashe mu nzu, maze urukiko rugategeka ko abisubizwa[16]. Uwitwa Prachuya Sahu Nawe agaragaza ko no mu Buhinde ari ko bimeze. Ho bavuga ko umutungo utimukanwa ugizwe n'ubutaka, uburenganzira umuntu akura ku butaka, ibintu biteye ku butaka n'ibintu bifatishijwe ku giteye ku butaka ku buryo buhoraho (Immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth)[17].

b. Ibijyanye na nyir'ibiri ku mutungo utimukanwa

[49] Igika cya mbere cy'ingingo ya 35 y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda kivuga ko "Inyubako zose, ibihingwa n'ibindi bikorwa biri ku butaka byashyizweho na nyir'ubutaka akoresheje umutungo we cyangwa se ubundi buryo bifatwa nk'ibye". Iyi ngingo iragaragaza ko ibikorwa biri ku butaka bigendana na bwo, nta waza gukuraho ibiburiho yitwaje ko atari ibya nyirabwo, cyangwa se bidakozwe mu nzira ziteganywa mu gika cya kabiri cy'iyi ngingo kigira kiti: "Icyakora, ntibibujije ko umuntu ashobora gutunga inyubako, ibihingwa n'ibindi bikorwa ku butaka bw'undi muntu mu gihe bikurikije iri tegeko, andi mategeko cyangwa amasezerano na nyir'ubutaka"[18].

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[15] Maret Carroll: The distinctionbetween movable andimmovable property; In https://www.snymans.com/advice/the-distinction-between-movable-and-immovable-property.

[16] 16 Senekal v Roodt 1983(2) SA 602 T: "ACKERMANN J held, that an accessory thing for purpose of a contract for sale of immovables must be regarded as part of the "res" (immovable thing) sold if it was destined to be of permanent service to the immovable res and if it is necessary for the effective use or exploitation ofthe immovable res. The court held, further (per COETZEE J), that when a composite thing is designed as a unit and the principal part thereof is incorporated (whether by weight or physical connection - "aard of nagelvast") in an immovableres, then the loose parts of the unit, as part thereof, also become prima facie immovable. It was further held, accordingly, that the appeal shouldsucceed in so far as the bar stools were concerned, but that, whereas the steel cabinets did not meet the above tests, they should be restored to the respondent"; https://www.coursehero.com/file/131506969/SENEKAL-v-ROODT-1983-2-SA-602-T-English-translationpdf/.

[17] 17 Prachuya Sahu: Categorization of immovable and moveable property | Symbiosis Law School, Pune | 27th June, 2020; In LexForti Legal News Network, June 27, 2020, https://lexforti.com/legal-news/categorization-of-immovable-and-moveable-property/.

[18] Iki gika ntikireba ibiburanwahomuri uru rubanza kuko ibiburanwa biri kubutaka byari iby'ababuranyi bombi mbere y'ivanguramutungo risesuye.

[50] Itegeko ry'abafaransa naryo ni ko ribiteganya mu ngingo yaryo ya 552[19] nk'uko bigaragara mu gitabo cyabo cy'urwunge rw'amategeko mbonezamubano. Abahanga mu mategeko mu kubisobanura bavuga ko ihame rivugwa muri iyi ngingo rireba ukwegukana umutungo wimukanwa ndetse n'umutungo utimukanwa, rikaba rivuga ko ikintu gituruka ku kindi cyangwa se ikigifasheho cyegukanwa na nyir'icyo kintu giturukaho cyangwa gifasheho, bagatanga n'urugero rw'uko nyir'ubutaka ari nawe nyir'inyubako zose cyangwa ibihingwa byose biri kuri ubwo butaka (le mécanisme juridique, décrit (…), concerne l'accession mobilière autant qu'immobilière, à savoir qu'il peut concerner les meubles et les immeubles. Elle permet de dire que tout ce qui est produit par la chose ou qui s'incorpore à la chose va également appartenir au propriétaire de cette chose, ex: le propriétaire du sol devient propriétaire de toutes les constructions ou les plantations qui se sont faites sur son terrain)[20].

[51] Hakurikijwe ibimaze kuvugwa ku bijyanye n'igisobanuro cy'umutungo utimukanwa n'ukwiriye kuba nyirawo, Urukiko rusanga umutungo utimukanwa ugizwe (i) n'ubutaka kimwe n'ibyubatse cyangwa ibimera ku butaka, (ii) ibintu byimukanwa bihinduka ibitimukanwa kubera isano bifitanye kugirango bidatandukanywa mu buryo bwabangamira nyir'umutungo (immeubles par destination) birimo umutungo wimukanwa wafatishijwe ku mutungo utimukanwa ku buryo buhoraho, n'umutungo wimukanwa ugenewe gutuma umutungo utimukanwa ushobora gokoreshwa, hakaba (iii) n'umutungo utimukanwa mu buryo bw'icyo ushingiyeho (immeuble par l'objet auquel il s'applique). Ni ukuvuga ko amazu, ibikoresho byose biteye mu nzu nk'ibyo mu bwogero n'ubwiherero, n'ibindi byose biyiteyemo bigamije gutuma iyo nzu ikoreshwa, bifatwa nk'umutungo utimukanwa, bikaba ibya nyir'ubutaka biriho. Ufashe urugero mu bijyanye n'ihererekanya ry'umutungo utimukanwa, birazwi ko uwegukana umutungo utimukanwa mu buryo bwo kuwugura, kuwuzungura cyangwa kuwuhabwa, anegukana ibiwuriho byose. Ntawe uhererekanya ubutaka ngo asigarane ibibwubatseho. Ntawe ugurisha inzu ngo abanze akureho inzugi, amadirishya, imisarani, ibigize ubwogero cyangwa ibishyushya amazi, kuko biba bigenewe gutuma iyo nzu ishobora gukoreshwa.

[52] Urukiko rurasanga hashingiwe kuri ibi bisobanuro, kuba Urubanza N° RC 00445/2019/TB/MUH rwaremeje ko umutungo ubaruye kuri UPI: 4/03/02/06/338 uhabwa Nyirandihano Madeleine, byumvikana ko yaneguriwe ibiriho byose mu buryo bwasobanuwe haruguru, byaba inyubako, ibikoresho bigamije gutuma inyubako ishobora gukoreshwa, ndetse n'ibyafatishijwe ku nyubako ku buryo buhoraho byose.

c. Ese hari ivuguruzanya hagati y'urubanza Nº RC 00445/2019/TB/MUH n'urubanza Nº RC 00432/2020/TB/MUH nk'uko rwemejwe n'urubanza Nº RCA 00054/2022/TGI/MUS?

[53] Imanza ziregerwa kuvuguruzanya ari zo urubanza N° RC 00445/2019/TB/MUH rwemeje ivanguramutungo risesuye n'urubanza N° RC 00432/2020/TB/MUH rwemejwe n'urubanza N° RCA 00054/2022/TGI/MUS rwemeje ubutane, zombi zabaye itegeko ndetse urubanza rwemeje

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[19] Article 552: La propriété du sol emporte la propriété du dessus et du dessous. Le propriétaire peut faire au-dessus toutes les plantations et constructions qu'il juge à propos, sauf les exceptions établies au titre " Des servitudes ou services fonciers ". Il peut faire au-dessous toutes les constructions et fouilles qu'il jugera à propos, et tirer de ces fouilles tous les produits qu'elles peuvent fournir, sauf les modifications résultant des lois et règlements relatifs aux mines, et des lois et règlements de police.

[20] Cabinet BRUZZO DUBOUCQ: La propriété du dessus et du dessous, conséquences du droit de propriété. https://bruzzodubucq.com/2017/04/25/la-propriete-du-dessus-et-du-dessous-consequences-du-droit-de- propriete/

ivanguramutungo risesuye rurarangizwa. Ikibazo cyavutse ari uko mu rubanza rwemeje ubutane Urukiko rwemeje ko hari imitungo iri mu mutungo weguriwe Nyirandihano Madeleine igomba guhabwa Nemeyabahizi Jean Baptiste, akaba ari byo Nyirandihano Madeleine agaragaza ko bivuguruzanya n'urubanza rwa mbere.

[54] Hakurikijwe ibisobanuro byatanzwe mu duce a. na b., umutungo wose utimukanwa uri ku butaka bufite UPI: 4/03/02/06/338 bweguriwe Nyirandihano Madeleine ni uwe ku buryo budashidikanywaho, akaba awufiteho uburenganzira busesuye nk'uko buteganywa n'Itegeko nshinga rya Repubulika y'u Rwanda mu ngingo yaryo ya 34[21]. Kuba Urukiko mu rubanza rw'ubutane rwaremeje ko "ibikoresho bigize inyubako z'igaraje na "dépôt", Jacuzzi n'ibigega by'amazi bikoreshwa mu nzu byegurirwa Nemeyabahizi Jean Baptiste" biravuguruza urubanza Nº RC 00445/2019/TB/MUH, kuko Umucamanza yafashe icyemezo ku mitungo yamaze kwegurirwa Nyirandihano Madeleine, bikaba bituma habaho imanza ebyiri zidashobora kubangikanywa (deux décisions inconciliables) kandi zidashobora kurangirizwa rimwe.

[55] Urukiko rusanga urubanza Nº RC 00432/2020/TB/MUH rwemejwe n'urubanza Nº RCA 00054/2022/TGI/MUS rudashobora kurangizwa rudahungabanyije uburenganzira bwa Nyirandihano Madeleine yahawe mu rubanza Nº RC 00445/2019/TB/MUH. Kubera iyo mpamvu, Urukiko rurasanga izo manza zombi zivuguruzanya.

B. Ku bijyanye n'ivuguruzanya rishingiye ku kuba hari indi mitungo Urukiko rweguriye Nemeyabahizi Jean Baptiste kandi itaragarutsweho mu rubanza Nº RC 00445/2019/TB/MUH

[56] Mu manza z'ubutane, inkiko zombi zavuze ko imitungo itaravuzwe mu rubanza rw'ivanguramutungo risesuye yegukanwa na Nemeyabahizi Jean Baptiste, zishingiye ku kuba Urukiko rwarabyemeje mu rubanza rw'ivanguramutungo risesuye no ku kuba Nyirandihano Madeleine yarabyivugiye ubwe, ndetse akanabishyira mu myanzuro ye mu rubanza rw'ivanguramutungo. Iyo usomye icyemezo cy'Urukiko usanga ntaho ibyo bigaragara, ahubwo abacamanza barafashe nabi amagambo "imitungo isigaye" agaragara muri kopi y'urubanza rw'ivanguramutungo risesuye, aho Umucamanza agira ati: "Nemeyabahizi Jean Baptiste agaherera ku mitungo irindwi isigaye ari yo: UPI 4/03/02/04/3759, UPI 4/03/09/03/4841, UPI 4/03/09/03/4836, UPI 4/03/09/03/4839, UPI 4/03/09/03/4843, UPI 4/03/09/03/5179 na UPI 4/03/12/02/637", akaba yaravugaga isigaye kuri 12 yari yakoreye urutonde akanagaragaza nimero zayo.

[57] Hashingiwe ku byagaragajwe mu gika cya 41cy'urubanza rwa Rutayisire Jean de Dieu n'abandi rwagarutsweho, hashobora kubaho kuvuguruzanya kw'imanza iyo hari ibyemezo bitandukanye by'inkiko bitagishoboye kujuririrwa, bikaba bidashobora kubangikanywa (deux décisions inconciliables) kandi bidashobora kurangirizwa rimwe. Kuba iyo mitungo yaravuzwe gusa mu rubanza rw'ubutane ariko ikaba itarigeze ivugwaho mu rubanza rw'ivanguramutungo risesuye, Urukiko rusanga icyemezo cyayifatiwe nta kindi bivuguruzanya, bityo iyi ngingo ya Nyirandihano Madeleine ikaba nta shingiro ifite.

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[21] Iyo ngingo iteganya ko: "Buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa. Uburenganzira ku mutungo ntibuhungabanywa, keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko".

II. 2. Kumenya niba urubanza Nº RC 00432/2020/TB/MUH n'urubanza no RCA 00054/2022/TGI/MUS zikwiriye kuvaho

[58] Twahirwa Jean Claude, umuhungu wa Nyirandihano Madeleine hamwe n'abamwunganira bavuga ko mu rubanza Nº RC 00432/2020/TB/MUH rwaciwe ku wa 15/03/2022, Urukiko rw'Ibanze rwa Muhoza rutari kwemeza ko inyubako za dépôts za Entreprise NJB zigomba guhabwa Nemeyabahizi Jean Baptiste, kuko uwo mutungo ufite UPI: 4/03/02/06/338 wari warafashweho icyemezo mu rubanza Nº RC 00445/2019/TB/MUH, urwo rubanza rukaba rwaremeje ko ugomba kuba uwa Nyirandihano Madeleine, ndetse rukanemeza ko imitungo yose yasigaye itaragaragajwe mu rubanza Nº RC 00445/2019/TB/MUH ihabwa Nemeyabahizi Jean Baptiste, kandi nyamara itarigeze igarukwaho muri urwo rubanza.

[59] Basoza basaba ko ku bw'ibanze uru Rukiko rwakwemeza ko imanza bagarutseho zivuguruzanya, maze rukemeza ko urubanza RC 00432/2020/TB/MUH ndetse n'urubanza RCA 00054/2022/TGI/MUS zerekeye ubutane zivanyweho kuko ari zo zaciwe nyuma y'urubanza no RC 00445/2019/TB/MUH rwerekeye guhindura uburyo bwo gucunga umutungo w'abashakanye.

[60] Mu iburanisha ryo ku wa 02/04/2024, babajijwe niba bumva urubanza rw'ubutane rwateshwa agaciro basubiza ko rwateshwa agaciro, ubutane bukazongera kuregerwa.

[61] Nemeyabahizi Jean Baptiste na Me Ndayishimiye Jean Paul bavuga ko nta kuvuguruzanya kuri hagati y'urubanza Nº RC 00445/2019/TB/MUH n'urubanza Nº RC 00432/2020/TB/MUH nk'uko rwemejwe n'urubanza Nº RCA 00054/2022/TGI/MUS kuko urubanza Nº RC 00445/2019/TB/MUH rwamaze kurangizwa; kandi ko n'ikosa ryari ryakozwe n'Urukiko rw'Ibanze rwa Muhoza, ryakosowe n'Urukiko Rwisumbuye rwa Musanze.

[62] Basoza bavuga ko urubanza Nº RC 00432/2020/TB/MUH ndetse n'urubanza Nº RCA 00054/2022/TGI/MUS zitakurwaho kuko zitavuguruzanya n'urubanza Nº RC 00445/2019/TB/MUH, kandi ko nta n'ikibazo cyo kuzirangiza kigaragaramo.

[63] Mu iburanisha ryo ku wa 02/04/2024, ku bijyanye n'ikibazo cyo kumenya niba bumva urubanza rw'ubutane rwateshwa agaciro, bavuga ko bashingiye ku murongo watanzwe mu rubanza RC00004/2017/SC, Urukiko ari rwo rufite bubasha bwo kumenya ingingo zivuguruzanya, basaba ko hasuzumwa ingingo yitwa ko ivuguruzanya n'indi mu manza zagarutsweho aho kuvanaho urubanza rwose.

UKO RUKIKO RUBIBONA

[64] Mu rubanza rwa Rutayisire Jean de Dieu n'abandi rwagarutsweho, Urukiko rwagaragaje ko iyo ukuvuguruzanya gushingiye ku kuba hari imanza ebyiri zidashobora kubangikanywa (deux décisions inconciliables) kandi zidashobora kurangirizwa rimwe, hateshwa agaciro rumwe muri izo manza cyangwa zombi.

[65] Muri urwo rubanza kandi, Urukiko rwagaragaje ko barebye uko ahandi bikorwa, basanze impamvu inkiko zagiye zishingiraho zikuraho rumwe mu manza zivuguruzanya zigenda zitandukana, ariko ko muri rusange zakuyeho urubanza rwaciwe hirengangijwe amategeko

cyangwa hadakurikijwe umurongo wari usanzwe uriho, zikagumishaho urubanza Urukiko rwasanze rutanga ubutabera[22].

[66] Iyo usuzumye izi manza ziburanwaho, usanga urubanza no RC 00432/2020/TB/MUH nk'uko rwemejwe n'urubanza Nº RCA 00054/2022/TGI/MUS rwarakoze amakosa yo kwegurira Nemeyabahizi Jean Baptiste umutungo wari wareguriwe Nyirandihano Madeleine mu rubanza rwari rwaramaze kuba itegeko, rukaba rwarahungabanyije uburenganzira bwe ku mutungo we yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda mu ngingo yaryo ya 34, rukaba rwaranirengagije ingingo ya 35 y'Itegeko Nº 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda. Uru rubanza kandi rwakoze amakosa yo gufata nabi ibintu, aho rwise "ibikoresho" inyubako ziri ku butaka bufite UPI: 4/03/02/06/338.

[67] Kubera ko urubanza Nº RC 00432/2020/TB/MUH n'urubanza Nº RCA 00054/2022/TGI/MUS rwarwemeje zombi zirengagije amategeko, zikaba zaranafashe icyemezo ku mutungo wari waramaze gufatwaho icyemezo mu rundi rubanza, Urukiko rurasanga izo manza zombi ari zo zikwiye kuvanwaho.

II. 3. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza

[68] Nyirandihano Madeleine yasabye Urukiko ko rwategeka Nemeyabahizi Jean Baptiste kumwishyura 1.500.000 Frw akubiyemo ikurikirana rubanza ndetse n'igihembo cya Avoka.

[69] Nemeyabahizi Jean Baptiste yasabye Urukiko ko rwategeka Nyirandihano Madeleine kumwishyura 2.000.000 Frw akubiyemo igihembo cya Avoka ndetse n'indishyi z'akababaro kubera kumushora mu nkiko.

[70] Nyirandihano Madeleine avuga ko indishyi zisabwa na Nemeyabahizi Jean Baptiste zitahabwa agaciro kuko ari we nyirabayazana w'ivuguruzanya ry'imanza zabaye, mu gihe ari we ubwe wareze asaba gusenya inyubako zahawe Nyirandihano Madeleine bigatuma habaho kuvuguruza urubanza rw'ivanguramutungo Nº RC 00445/2019/TB/MUH.

UKO RUKIKO RUBIBONA

[71] Ingingo ya 111 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 ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[72] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Nemeyabahizi Jean Baptiste asaba atayahabwa kuko atsinzwe urubanza. Naho ku birebana n'ayo Nyirandihano Madeleine asaba, Urukiko rurasanga akwiye kuyahabwa kubera ko ari we utsinze urubanza. Ariko kubera ko 1.500.000 Frw asaba ari menshi kandi atayatangira ibimenyetso, mu bushishozi bw'Urukiko agenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza.

[22] igika cya 41

III. ICYEMEZO CY'URUKIKO

[73] Rwemeje ko ikirego cyatanzwe na Nyirandihano Madeleine gisaba gukemura ikibazo cy'ivuguruzanya ry'urubanza N° RC 00445/2019/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ku wa 04/09/2019 n'urubanza N° RC 00432/2020/TB/MUH rwaciwe n'Urukiko rw'ibanze rwa Muhoza ku wa 15/03/2022 rukemezwa n'urubanza N° RCA 00054/2022/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 16/052023 gifite ishingiro.

[74] Rwemeje ko urubanza N° RC 00445/2019/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ku wa 04/09/2019 ruvuguruzanya n'urubanza N° RC 00432/2020/TB/MUH rwaciwe n'Urukiko rw'ibanze rwa Muhoza ku wa 15/03/2022 rukemezwa n'urubanza N° RCA 00054/2022/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 16/05/2023.

[75] Rwemeje ko urubanza N° RC 00432/2020/TB/MUH rwaciwe n'Urukiko rw'ibanze rwa Muhoza ku wa 15/03/2022 n'urubanza N° RCA 00054/2022/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 16/052023 zikuweho.

[76] Rutegetse ko urubanza N° RC 00445/2019/TB/MUH rwaciwe n'Urukiko rw'Ibanze rwa Muhoza ku wa 04/09/2019 rugumana agaciro karwo.

[77] Rutegetse Nemeyabahizi Jean Baptiste guha Nyirandihano Madeleine 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.