UWIDUHAYE N'UNDI v HAKIZIMANA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00004/2022/SC (Mukamulisa, J.P, Cyanzayire, Hitiyaremye, J.) 14 Nyakanga 2023]

Amategeko agenga imanza z'imbonezamubano - Umuryango - Izungura Gusaba kuzungura imitungo yamaze kugabanwa mbere y'uko ubisaba yemezwa n'urukiko ko akomoka kuri nyakwigendera - Ukudateshwa agaciro kw'izungura ryakozwe rikarangira hagati y'abari bafite uburenganzira – Kuba hari umuzungura wamenyekanye byemejwe n'Urukiko nyuma y'uko izungura rishyirwa mu bikorwa, ntibishobora gutesha agaciro izungura ryakozwe rikarangira hagati y'abari bafite uburenganzira bwo kuzungura mbere y'uko hatangwa ikirego kigamije kwemeza se w'umwana. Azungura gusa umutungo wari utaragabanwa kuva igihe yemerejwe n'Urukiko ko akomoka kuri Nyakwigendera.

Amategeko agenga imanza z'imbonezamubano – Umuryango - Imimerere y'abantu – Kwemeza se w'umwana iyo ababyeyi batashyingiranywe - Kwemeza ko umwana akomoka ku mubyeyi w'umugabo iyo ababyeyi batashyingiranywe, binyura mu nzira yo kumwemera ku bushake; ibyo byaba bitarakozwe, hakabaho ikirego kigamije kwemeza se w'umwana.

Amategeko agenga imanza z'imbonezamubano – Umuryango - Imimerere y'abantu - Kwemeza se w'umwana iyo ababyeyi batashyingiranywe - Umwana ufite imimerere izwi - Kuba umwana uvuka ku babyeyi batashyingiranywe asanganywe imimerere izwi (possession d'état d'enfant naturel), biba gusa ikimenyetso mu rubanza rugamije kwemeza se, ariko ubwabyo ntibyashingirwaho ngo hemezwe se hatabaye urubanza ngo hemezwe ko se ari runaka, kandi ko ashobora kumuzungura.

Incamake y'ikibazo: Ku wa 10/11/2006, Uwiduhaye na Uwineza bemejwe n'Urukiko Rwisumbuye rwa Nyarugenge ko ari bene Kayitsinga wishwe muri Jenocide yakorewe Abatutsi mu 1994, agapfana n'umugore basezeranye n'abana babyaranye. Bamaze kwemezwa ko ari bene Kayitsinga, batanze ikirego mu Rukiko rw'Ibanze rwa Nyarugenge basaba gucunga imitungo yasizwe na Se, ikirego cyabo gihabwa ishingiro. Iraguha (nyina wa Kayitsinga) yatambamiye urwo rubanza, ikirego cye gihabwa ishingiro, hemezwa ko imikirize y'urubanza rwatambamiwe ivuyeho kuko Uwiduhaye na Uwineza basabye gucunga umutungo wamaze kuzungurwa ku wa 17/12/2000 ubwo inama y'umuryango y'izungura ihuriwemo n'abarokotse Jenoside yakorewe Abatutsi bo mu muryango wa Kayitsinga n'abo mu muryango wa Mukandekezi yemezaga ko abazungura ku ruhande rwa Kayitsinga bafata ½ cy'imitungo izungurwa cyaje gufatwa na Iraguha, ikindi ½ kigafatwa n'abazungura ku ruhande rwa Mukandekezi.

Uwiduhaye na Uwineza batanze ikindi kirego mu Rukiko Rwisumbuye rwa Nyarugenge, barega Iraguha na Hakizimana (umuvandimwe wa Kayitsinga) ko bigaruriye imitungo ya se. Bavugaga ko izungura ritakurikije amategeko, kuko ryakozwe bafite imimerere izwi nk'abana ba Kayitsinga, bakaba aribo bagombaga kumuzungura. Urukiko rwategetse ko imitungo yose ya Kayitsinga isubizwa abana be bakayicunga kugeza igihe izungura rizabera. Hakizimana na Iraguha bajuririye urwo rubanza mu Rukiko Rukuru, ubujurire bwabo buhabwa ishingiro mu rubanza Nº RCA 0637/13/HC/KIG rwaciwe ku wa 13/05/2014.

Uwiduhaye na Uwineza ntibishimiye icyo cyemezo, basaba ko urubanza rwasubirwamo ku mpamvu z'akarengane ruhabwa Urukiko rw'Ikirenga rusuzuma ikibazo nyamukuru cyo kumenya niba izungura ryakozwe ku mutungo wasizwe na Kayitsinga ku wa 17/12/2000, ryateshwa agaciro

kugirango Uwiduhaye na Uwineza bemejwe n'Urukiko nk'abana be ku wa 10/11/2006, babe aribo bamuzungura.

Abarega bavuga ko aribo bari bafite uburenganzira bwo kuzungura kuko bari bafite imimerere izwi (possession d'etat) nk'abana ba Kayitsinga yabyaye ku mugore utari uw'isezerano kandi bakaba barabanaga na nyirakuru Iraguha mu mwaka wa 1996 bizwi ko ari abana ba Kayitsinga bakavuga ko aribo bagombaga kuzungura kuko iyo ababyeyi bombi bapfuye bagasiga abana umutungo wose uzungurwa n'abana bagafasha ba sekuru na ba nyirakuru.

Hakizimana na Iraguha biregaura basobanura ko Kayitsinga n'umugore we w'isezerano n'abana babo babiri (2) bishwe muri jenoside yakorewe abatutsi bapfa nta wundi mwana basize. Izungura ry'imitungo yabo ryabaye mu mwaka wa 2000 mu gihe urukiko rwemeje ko abarega bakomoka kuri Kayitsinga mu mwaka wa 2006. Bakomeza basobanura ko Uburenganzira bw'abana babyawe na Kayitsinga butangira igihe byemerejwe n'urukiko ko ari we se, ni ukuvuga kuva ku wa 30/06/2006. Bivuze ko ibyo bagiraho uburenganzira ari umutungo waba utari wagabanywa (indivision) kuva aho imanza zabemereje zaciriwe.

Incamake y'icyemezo: Kuba hari umuzungura wamenyekanye byemejwe n'Urukiko nyuma y'uko izungura rishyirwa mu bikorwa, ntibishobora gutesha agaciro izungura ryakozwe rikarangira hagati y'abari bafite uburenganzira bwo kuzungura mbere y'uko urubanza rugamije kwemeza se w'umwana rucibwa ahubwo azungura gusa umutungo wari utaragabanwa kuva igihe yemerejwe n'Urukiko ko akomoka kuri nyakwigendera, bityo ibyo Uwiduhaye na Uwineza basaba bikaba bitahabwa agaciro kuko bemejwe ko ari abana ba Kayitsinga nyuma y'uko izungura riba.

Ikirego gifite ishingiro kuri bimwe.

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Amategeko yifashishijwe atagikoreshwa:

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'abashyingiranywe, impano n' izungura, ingingo ya 50, 307, 308, 318, 324, 328, 329.

Inyandiko z'abahanga zifashishijwe:

CDPF -Centre de Droit Privé Fondamental, 2011, p.4, consulté le 12/ 06/ 2023;

Yves - Henri LELEU, Droit des personnes et des familles, Bruxelles, 4 ème édit., Larcier, 2020, p. 637, Nº 675;

M. T. Meulders-Klein, L'établissement et les effets personnels de la filiation selon la loi belge du 31 mars 1987, annales de droit de Louvain, dans Revue Trimestrielle de Droit Belge, Tome XLVII 3-4/1987, p. 48, Nº 85.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku kibazo cyavutse mu izungura ry'imitungo yasizwe na Kayitsinga Emmanuel wishwe muri Jenoside yakorewe Abatutsi mu 1994, akicirwa hamwe n'umugore we w'isezerano Mukandekezi Emeriane n'abana babyaranye. Ku wa 17/12/2000, hateranye inama y'umuryango y'izungura ihuriwemo n'abarokotse Jenoside yakorewe Abatutsi bo mu muryango wa Kayitsinga Emmanuel n'abo mu muryango wa Mukandekezi Emeriane. Abari muri iyo nama bemeje ko abazungura ku ruhande rwa Kayitsinga Emmanuel bafata ½ cy'imitungo izungurwa, ikindi ½ kigafatwa n'abazungura ku ruhande rwa Mukandekezi Emeriane hakurikijwe ibiteganywa n'itegeko.

[2] Ku wa 18/11/2005, Uwiduhaye Maurice na Uwineza Marie la Douce bahagarariwe na nyina Mukantaganzwa Léonille batanze ikirego mu Rukiko rw'Ibanze rwa Nyarugenge, barusaba kwemeza ko babyawe na Kayitsinga Emmanuel. Mu rubanza No RC 0526/05/TD/NGY rwaciwe ku wa 30/06/2006, Urukiko rwemeje ko batsinzwe kubera kubura ibimenyetso. Bajuririye icyo cyemezo, Urukiko Rwisumbuye rwa Nyarugenge mu rubanza Nº RCA 0059/06/TGI/NYGE rwaciwe ku wa 10/11/2006, rwemeza ko Uwiduhaye Maurice na Uwineza Marie la Douce ari bene Kayitsinga Emmanuel, ko bahabwa uburenganzira bemererwa n'amategeko. Muri uru rubanza hagobokeshejwe ku gahato Iraguha Spéçiose umubyeyi wa Kayitsinga Emmanuel n'umuvandimwe we Hakizimana Vincent. Uyu yajuriye mu Rukiko Rukuru mu rubanza Nº RCAA 0654/06/HC/KIG rwaciwe ku wa 30/11/2007, rwemeza ko ubujurire bwe nta shingiro bufite.

[3] Aho bamariye kwemezwa n'Urukiko ko ari bene Kayitsinga Emmanuel, Uwiduhaye Maurice na Uwineza Marie la Douce batanze ikirego mu Rukiko rw'Ibanze rwa Nyarugenge bahagarariwe na nyina Mukantaganzwa Léonille, basaba gucunga imitungo yasizwe na Se, urubanza rwandikwa kuri Nº RC 0222/08/TB/Nyg, rucibwa ku wa 18/07/2008, Urukiko rwemeza ko ikirego cyabo gifite ishingiro. Iraguha Spéçiose yatambamiye uru rubanza, ikirego cye cyandikwa kuri Nº RC 0309/08/TB/Nyg, urubanza rucibwa ku wa 31/10/2008. Urukiko rwemeje ko ikirego cye gifite ishingiro, ko imikirize y'urubanza rwatambamiwe ivuyeho kuko Uwiduhaye Maurice na Uwineza Marie la Douce basabye gucunga umutungo wamaze kuzungurwa, ukaba utakiriho.

[4] Uwiduhaye Maurice na Uwineza Marie la Douce bahagarariwe na Mukantaganzwa Léonille bajuriye mu Rukiko Rwisumbuye rwa Nyarugenge, bavuga ko bajuririye urubanza Nº RC 0222/08/TB/Nyge rwaciwe ku wa 31/08/2008, ubujurire bwabo bwandikwa kuri Nº RCA 0149/08/TGI/Nyge, urubanza rucibwa ku wa 17/04/2009. Urukiko rwemeje ko ubujurire bwabo butakiriwe kubera ko bareze Iraguha Spéçiose utarigeze uba umuburanyi mu rubanza Nº RC 0222/08/TB/Nyge, bakaba kandi barakererewe kujurira kuko urubanza bavuze ko bajuririye rwaciwe ku wa 18/07/2008, bo bakajurira ku wa 17/11/2008[1].

[5] Uwiduhaye Maurice na Uwineza Marie la Douce bahagarariwe na Mukantaganzwa Léonille batanze ikindi kirego mu Rukiko Rwisumbuye rwa Nyarugenge bavuga ko imitungo ya Se Kayitsinga Emmanuel yigaruriwe na Iraguha Spéçiose na Hakizimana Vincent, kubera ko izungura ritakurikije amategeko, basaba n'indishyi zinyuranye. Urubanza rwanditswe kuri Nº RC

[1] Aha iyo usuzumye neza usanga Mukantaganzwa Léonille wajuriye ahagarariye Uwiduhaye na Uwineza, yaranditse nimero y'urubanza yashakaga kujuririra nabi, aho kwandika urubanza Nº RC 0309/08/TB/Nyg rwatambamiye urubanza Nº RC 0222/08/TB/Nyg, yandika uru rwatambamiwe

0408/09/TGI/Nyge, rucibwa ku wa 08/07/2011, Urukiko rwemeza ko ikirego gisibwe mu bitabo by'urukiko kubera ko rwashajishijwe no kudakurikiranwa.

[6] Uwiduhaye Maurice yabyukije urubanza kuri Nº RC 0758/11/TGI/Nyge, ariko aribeshya yandika ko urubanza abyukije rwasomwe ku wa 31/08/2011, bituma ikirego kitakirwa kubera ko cyatanzwe mu buryo bunyuranyije n'amategeko.

[7] Uwiduhaye Maurice afatanyije na Uwineza Marie la Douce bongeye gutanga ikirego cyo kubyutsa urubanza Nº RC 0408/09/TGI/Nyge, cyandikwa kuri Nº RC 0162/13/TGI/Nyge, urubanza rucibwa ku wa 25/10/2013. Urukiko rwemeje ko ikirego cyabo cyakiriwe ko kandi gifite ishingiro, rutegeka ko imitungo yose ya Kayitsinga Emmanuel isubijwe mu mutungo we kugeza izunguwe, rutegeka ko isubijwe abana be bakayicunga kugeza igihe izungura rizabera, rutegeka Hakizimana Vincent na Iraguha Spéçiose gufatanya kwishyura abana ba Kayitsinga Emmanuel indishyi zingana na 5.580.000 Frw.

[8] Urukiko rwasobanuye ko izungura ryari ryakozwe mu buryo budakurikije amategeko kandi ko ibyakozwe byose byakozwe mu buriganya, kuko Uwiduhaye Maurice yabaga kwa se mbere y'uko apfa, nyuma ya jenoside yakorewe Abatutsi akajyanwa na Iraguha Spéçiose kurererwa iwe, bikaba byari bizwi ko ari umwana wa Kayitsinga Emmanuel n'ubwo byari bitaremezwa n'Urukiko.

[9] Hakizimana Vincent na Iraguha Spéçiose bajuririye urwo rubanza mu Rukiko Rukuru, ikirego cyandikwa kuri Nº RCA 0637/13/HC/KIG, urubanza rucibwa ku wa 13/05/2014, Urukiko rwemeza ko ubujurire bwabo bufite ishingiro, ko Uwiduhaye Maurice na Uwineza Marie la Douce batsinzwe, ko imikirize y'urubanza rwajuririwe ivanyweho. Urukiko rwasobanuye ko:

a. Hashingiwe ku ngingo ya 49, igika cya 2[2], y'Itegeko Nº 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashakanye impano n'izungura, rusanga ubwo izungura ryatangiraga abari bahari bagomba guhita bazungura Kayitsinga Emmanuel mu buryo bwemewe n'amategeko ari ababyeyi be n'abavandimwe be kubera ko nta mwana yasize.

b. Ku wa 17/12/2000, abagize umuryango wa Kayitsinga Emmanuel n'umugore we bateranye bakagabana umutungo basize, hakurikijwe ibiteganywa n'Itegeko Nº 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru ryari rimaze gusohoka, bumvikana ko buri ruhande rufata ½ cy'umutungo wagombaga kuzungurwa, bikorerwa inyandiko.

c. Nta bimenyetso by'uko izungura ryakozwe ku wa 17/12/2000 ryakozwe mu buriganya hagamijwe kwambura abana ba Kayitsinga Emmanuel imitungo, kuko ba nyakwigendera bapfuye nta mwana basize nta n'uwo bemeye, Uwiduhaye Maurice na Uwineza Marie la Douce bakaba baremejwe nyuma y'uko abagize umuryango wabo bamaze kugabana umutungo uburanwa.

d. Ibyo Urukiko Rwisumbuye rwashingiyeho ko abo mu muryango wa Kayitsinga Emmanuel bari bazi abo bana, ndetse baranageze mu rugo rwabo, bitafatwa nk'ikimenyetso cy'imimerere(Possession d'état) cyashingirwaho kugira ngo Urukiko

[2] Izungura ritangira iyo umuntu amaze gupfa, rikabera ahantu yari atuye cyangwa aho yabaga.

rwemeze ko bari basanzwe bazwi ko ari abana ba Kayitsinga Emmanuel, bafite uburenganzira bwo kumuzungura, ko ahubwo uburenganzira bwabo butangira igihe Urukiko rubemereje, bivuze ko ibyo bagiraho uburenganzira ari ibyari bitaragabanywa kuva aho urubanza rubemeza ruciriwe ku wa 10/11/2006.

e. Mwiseneza nawe bivugwa ko ari umuzungura wa Kayitsinga Emmanuel atari umwana yabyaranye na Mukandekezi Emeriane nk'uko bivugwa mu rubanza rujuririrwa, kuko icyemezo cy'amavuko ye kigaragaza ko abyarwa na Mukangarambe, hakaba nta kigaragaza ko igihe umutungo wagabanywaga bari bazi ko ahari, kandi ko yemewe nk'umuzungura.

f. Kuba igabana ryarashingiye ku itegeko ryasohotse nyuma y'aho Kayitsinga Emmanuel apfiriye atari impamvu yaritesha agaciro, kuko ntawe ryarenganyije mu bari bafite uburenganzira bwo kumuzungura mu 1994.

[10] Ku wa 30/06/2014, Uwiduhaye Maurice yandikiye Urwego rw'Umuvunyi asaba ko urubanza Nº RCA 0637/13/HC/KIG rwaciwe ku wa 13/05/2014 rusubirwamo ku mpamvu z'akarengane. Ku wa 27/08/2015, Umuvunyi Mukuru yamwandikiye amusubiza ko nta karengane kari mu rubanza. Uwiduhaye Maurice yongeye kwandikira Urwego rw'Umuvunyi ku wa 27/07/2017, asaba ko akarengane ke kongera gusuzumwa. Ku wa 23/08/2018, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza Nº RCA 0637/13/HC/KIG rusubirwamo ku mpamvu z'akarengane.

[11] Ku wa 01/04/2022, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza No RCA 0637/13/HC/KIG rwongera kuburanishwa, ikirego gihabwa Nº RS/INJUST/RC 00004/2022/SC, iburanisha ry'urubanza rishyirwa ku wa 19/09/2022. Kuri iyi tariki, iburanisha ryabereye mu ruhame, Uwiduhaye Maurice na Uwineza Marie la Douce bahagarariwe na Me Nsabayezu Evariste afatanyije na Me Nsabimana Jean Baptiste, Iraguha Spéçiose na Hakizimana Vincent bahagarariwe na Me Nduwamungu Jean Vianney.

[12] Mbere y'uko urubanza rwinjira mu mizi, Me Nduwamungu Jean Vianney yatanze inzitizi avuga ko ikirego cyatanzwe na Uwiduhaye Maurice kitagombaga kwakirwa kubera ko Urwego rw'Umuvunyi rwivuguruje ruvuga ko nta karengane kari mu rubanza, nyuma rukongera kuvuga ko karimo. Mu cyemezo cyafatiwe mu ntebe, Urukiko rwemeje ko iyo nzitizi nta shingiro ifite, ko icyo kibazo cyafashweho umurongo mu rubanza Nº RS/INJUST/RC 00008/2019/SC haburana Mukarushakiro Gloriose, Bagenzi Théogene, Higiro James na Gahire Athanase.

[13] Me Nduwamungu Jean Vianney yongeye gutanga inzitizi avuga ko ikirego cyatanzwe na Uwiduhaye Maurice kitagombaga kwakirwa, kubera ko atagaragaje ibimenyetso bigaragarira buri wese byirengagijwe mu rubanza asaba ko rusubirwamo ku mpamvu z'akarengane. Me Nsabayezu Evariste na Me Nsabimana Jean Baptiste bahagarariye abarega basobanuye ko ibyo Me Nduwamungu Jean Vianney yita inzitizi atari yo, kuko aribyo byashingiweho hemezwa ko urubanza rusubirwamo ku mpamvu z'akarengane.

[14] Nyuma yo kwiherera, Urukiko rwemeje ko inzitizi yatanzwe na Me Nduwamungu Jean Vianney nta shingiro ifite, kuko ibijyanye n'iyakirwa ryo gusubirishamo urubanza ku mpamvu z'akarengane bikorwa na Perezida w'Urukiko rw'Ikirenga, bikaba bitagarukwaho n'inteko iburanisha urubanza mu mizi cyeretse igihe hagaragajwe impamvu ndemyagihugu, nk'igihe haba

harabayeho kwibeshya ku bihe byo gutanga ikirego; ibyo bikaba byarafashweho umurongo mu manza zinyuranye[3].

[15] Iburanisha ryarakomeje ababuranyi bagira icyo bongera ku myanzuro batanze, ariko ntiryasozwa kuko Urukiko rwasanze hari ibikenewe gukorwa mu rubanza kugira ngo rucibwe burundu. Ni muri urwo rwego Me Nduwamungu Jean Vianney uhagarariye abaregwa yasabwe kugaragaza inyandiko zose zijyanye n'ikibanza gifite m 100 x m 44, izijyanye n'ikibanza gifite m 38 x m 28, hamwe n'inyandiko zirebana n'ubugure bw'ibyo bibanza byombi.Yasabwe kandi kugaragaza ibyangombwa bishya byanditse kuri Iraguha Spéçiose na Hakizimana Vincent, no kugira icyo avuga ku nyandiko uruhande rw'abarega rwashyize muri IECMS nyuma y'inama ntegurarubanza igaragaza ko hari abandi bantu banditse kuri iyo mitungo. Iburanisha ryimuriwe ku wa 16/11/2022.

[16] Mu nyandiko yashyize muri IECMS, Me Nduwamungu Jean Vianney yasobanuye ibi bikurikira:

a. Mu gihe cy'izungura ryo ku wa 17/12/2000 hari ibibanza bibiri, igifite m 100 x m 44 n'igifite m 38 x m 28. Ubutaka bwari bufite m 38 x m 28 bwazunguwe na Iraguha Spéçiose, naho ubufite m 100 x m 44 buzungurwa na Munyagihe Eliabu. Mu gihe cy'ibarura ry'ubutaka, ubutaka bwazunguwe na Iraguha Spéçiose bwanditswe kuri UPI:1/03/10/01/1208 naho ubwazunguwe na Munyagihe Eliabu bwandikwa kuri UPI:1/03/10/01/1383.

b. Ku wa 14/02/2012, Iraguha Spéçiose yagurishije uwitwa Gasana Callixte ubutaka bwanditse kuri UPI:1/03/10/01/1208, na we arabugurisha amaze kubugabanyamo ibibanza bibiri bifite UPI:1/03/10/01/4923 na UPI:1/03/10/01/4924.

c. Ubutaka Munyagihe Eliabu yazunguye yabugurishije Hakizimana Vincent. Nyuma yo kubugura yabugabanyijemo ibibanza bine bifite UPI:1/03/10/01/4074, UPI:1/03/10/01/4075, UPI:1/03/10/01/4076, na UPI:1/03/10/01/4077. Muri ibyo bibanza bine, ubutaka bwanditse kuri UPI:1/03/10/01/4076 ni bwo Hakizimana Vincent yagumanye, ibindi bibanza arabigurisha.

[17] Ku wa 16/11/2022 iburanisha ryabereye mu ruhame, ababuranyi bunganiwe cyangwa bahagarariwe nk'uko amategeko abiteganya, habanza gusuzumwa ubusabe bwa Munyagihe Eliabu bwo kugoboka ku bushake mu rubanza. Mu nyandiko yashyikirije Ubwanditsi bw'Urukiko, Me SONGA Jean Claude wari umuhagarariye yasobanuye ko afite inyungu mu rubanza, kuko izungura ryaregewe riramutse riteshejwe agaciro nk'uko abarega babisaba, byamugiraho ingaruka zo gutakaza uburenganzira bwo kuzungura umukobwa we.

[18] Nyuma yo kumva icyo buri ruhande ruvuga ku busabe bwa Munyagihe Eliabu, Urukiko rwafatiye icyemezo mu ntebe ko butagomba kwakirwa ngo busuzumwe kuko nta nyungu bwite kandi itaziguye afite mu rubanza.

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[3] Urubanza Nº RS/INJUST/RC 00022/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa28/06/2019, haburana BUSORO Gervais na MUGUNGA n'abandi;
Urubanza Nº RS/INJUST/CIV 00011/2019/CS rwaciwe ku wa 12/02/2021, haburana MUKAMUSONI Petronille na NKUNDIMANA Edison.

[19] Urukiko rwasanze mbere y'uko iburanisha rikomeza, ari ngombwa kubanza gusaba amakuru Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda ku bijyanye n'uburyo ibibanza bifite UPI: :1/03/10/01/1208 na UPI:1/03/10/01/1383 byagiye biherererekanywa, rukanasaba icyo Kigo kuba gihagaritse ihererekanya ry'ubutaka kuri ibyo bibanza.

[20] Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda cyatanze amakuru cyari cyasabwe, kigaragaza ko ubutaka bwavuzwe mu gika kibanza bwahererekanyijwe mu buryo bukurikira:

a. Ubutaka bufite UPI:1/03/10/01/1208 bwakuwe ku mazina ya Succ Kayitsinga Emmanuel bwandikwa kuri Iraguha Spéciose, abugurisha Gasana Callixte wabugabanyijemo ibibanza 2, kimwe akakigurisha GANZA PEACE COMPANY Ltd, ikindi akakigurisha Kwizera Fabrice na BIRARO Christine.

b. Ubutaka bufite UPI: 1/03/10/01/1383 bwakuwe ku mazina ya Succ Kayitsinga Emmanuel bwandikw kuri Hakizimana Vincent na Izabiriza Tamari, babugabanyamo ibibanza 4. Ikibanza kimwe barakigumanye, ibindi babigurisha Mukamana Edisa, Mwesigye John na Mukakayumba Immaculée, Kankindi Nina na Habimana Augustin.

c. Mwesigye John na Mukakayumba Immaculée nabo bagurishij Sibomana Alphonse na Mukarugwiza Florentine.

[21] Urubanza rwongeye gushyirwa kuri gahunda y'iburanisha ku wa 24/02/2023, ariko rurasubikwa kugirango abantu bavuzwe mu gika kibanza bagiye bagura ubutaka buburanwa bagobokeshwe mu rubanza ku gahato. Urukiko rwemeje kandi ko abantu bagaragara ku nyandiko y'izungura yo ku wa 17/12/2000 bahamagarwa mu rubanza nk'abatangamakuru. Abo ni Mukagahame Domithille, Munyagihe Eliabu, Mukeshimana Marie Claire, Mukamwezi Evelyne, Nyiridandi Vénuste, Ngaboyisonga Emmanuel, Mavubi James, Kandiko Tharcisse, Kabirigi Simon na Uwimpundu Eugénie.

[22] Urubanza rwahamagawe ku wa 22/05/2023, ababuranyi bose baritaba bahagarariwe cyangwa bunganiwe nk'uko amategeko abiteganya. Abagobokeshejwe nabo bitabye bahagarariwe na Me Murigande Jean Claude, uretse GANZA PEACE COMPANY Ltd yari ihagarariwe n'Umuyobozi wayo Ndizeye Jean Bosco, akavuga ko adashobora kwishyura Avoka, kandi ko atahabwa icyangombwa cy'ubukene kuko atari mu cyiciro cy'abatishoboye. Urukiko rwafatiye icyemezo mu ntebe ko iburanisha rikomeza akaburanishwa nk'udahari, kubera ko ataburana atunganiwe kandi akaba yarahawe umwanya wo gushaka umwunganira ntabikore. Hitabye kandi na bamwe mu batangamakuru bari batumijwe.

[23] Me Murigande Jean Claude uhagarariye abagobokeshejwe yatanze inzitizi avuga ko ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane cyatanzwe na Uwiduhaye Maurice kitagombaga kwakirwa, kubera ko yarengeje ibihe byo kugitanga. Asobanura ko yabanje kugitanga mu 2015 agasubizwa ko nta karengane kagaragara mu rubanza, mu 2017 akongera kwandika agasubizwa mu 2018. Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko iyo nzitizi nta shingiro ifite, rutegeka ko iburanisha rikomeza humvwa abatangamakuru bahamagajwe hamwe n'abagobokeshejwe.

[24] Mu batangamakuru bahamagajwe n'Urukiko, habonetse Mukagahame Domithille wari mu bagize umuryango wa Kayitsinga Emmanuel, Mukeshimana Marie Claire na Mukamwezi Evelyne

bari mu bagize umuryango wa Mukandekezi Emeriane, aba bakaba barumviswe hakoreshejwe ikoranabuhanga kuko baba mu mahanga. Habonetse kandi Kandiko Tharcisse, Ngaboyisonga Emmanuel bagaragara mu nyandiko nk'abagabo, na Uwimpundu Eugénie wari umwanditsi w'inama akaba ari n'umukobwa wa Iraguha Spéçiose. Bose bahurije ku kuba izungura ryo ku wa 17/12/2000 ryarabayeho, kandi ko bari bahari. Abenshi mu batangamakuru kandi bahurije ku kuba mu kugabana ibyazunguwe, bumvikanye ko Iraguha Spéçiose afata ubutaka buto, akabwongeraho ubwo Kayitsinga Emmanuel yari afite ku ivuko.

[25] Muri uru rubanza, hasuzumwe ikibazo nyamukuru cyo kumenya niba izungura ryakozwe ku wa 17/12/2000 ryateshwa agaciro kugirango Uwiduhaye Maurice na Uwineza Marie la Douce babe aribo bazungura umutungo wasizwe na Kayitsinga Emmanuel. Hasuzumwe kandi n'ikibazo kirebana n'indishyi zasabwe n'ababuranyi.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Kumenya niba izungura ryakozwe ku wa 17/12/2000 ryateshwa agaciro kugirango Uwiduhaye Maurice na Uwineza Marie la Douce babe aribo bazungura umutungo wasizwe na Kayitsinga Emmanuel.

[26] Me Nsabayezu Evariste na Me Nsabimana Jean Baptiste bahagarariye Uwiduhaye Maurice na Uwineza Marie la Douce bavuga ko izungura ryashingiweho n'Urukiko Rukuru ritagombaga guhabwa agaciro, bashingiye ku mpamvu zikurikira:

a. Kuba izungura ritari gukurikiza ingingo ya 49 agace ka 2, y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashakanye impano n'izungura, kandi abana ba Kayitsinga Emmanuel bari bahari. Bavuga ko Uwiduhaye Maurice na Uwineza Marie la Douce bemejwe mu rubanza N° RCA 0059/06/TGI/NYGE rwaciwe ku wa 10/11/2006, bakaba bari bafite imimerere isanzwe izwi (possession d'état) nk'abana ba Kayitsinga Emmanuel, nk'uko byavuzwe n'abatangabuhamya.

b. Izungura ryagombaga gukurikiza ibyavugwaga mu ngingo ya 70, igika cya 2, y'Itegeko no 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru, yateganyaga ko "iyo ababyeyi bombi bapfuye bagasiga abana, umutungo wose uzungurwa n'abana bagafasha ba sekuru na ba nyirakuru….".

c. Urukiko rwirengagije inyandiko yemejwe n'ubuyobozi bw'Akagari ka Kamashashi ku wa 04/08/2008, igaragaza ko ubwo buyobozi buri kumwe n'abafite umutungo wa Kayitsinga Emmanuel bweretse abana bemejwe ko ari abe umutungo yasize, bigatuma bawiyandikishaho, Iraguha Spéçiose na Hakizimana Vincent ntibabitambamire kandi byarakozwe bahari.

d. Uwiduhaye Maurice na Uwineza Marie la Douce babanaga na nyirakuru mu 1996, bivuze ko bari basanzwe bafite imimerere y'abana ba Kayitsinga Emmanuel.

e. Ibiri mu nyandiko yiswe iy'izungura yo ku wa 17/12/2000 ntibyabayeho kuko nta kigaragaza ko ibyavugiwe muri iyo nama aribyo byanditswe.

f. Izungura ryakozwe na Iraguha Spéciose na Hakizimana Vincent ryakozwe mu buryo bunyuranyije n’amategeko, kuko hashingiwe ku ngingo ya 2 y’Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango, hibazwa uburyo Hakizimana Vincent yagiye mu bazungura.

g. Abatangamakuru bose bavuga ko habaye izungura, ariko ko iby’igabana bitigeze bibaho. Bigaragara kandi ko hafashwe ibindi byemezo bitajyanye n’izungura, bikaba biritesha agaciro.

h. Amakuru yatanzwe na Ngaboyisonga Emmanuel y’uko Hakizimana Vincent yari asanzwe atuye muri iyo mitungo, ko kandi ahagabanywe batigeze baherekwa, atandukanye n’ibyavuzwe n’abandi batangamakuru. Ibyo bikaba bigaragaza ko ibyanditswe mu nyandiko yo ku wa 17/12/2000 bitabayeho, bivuze ko n’ izungura ritarabayeho.

i. Mu nyandiko y’izungura handitse ko buri ruhande rwazunguye, nyamara abatangamakuru bakaba bavuga ko hazunguye Munyagihe Eliabu na Iraguha Spéciose.

[27] Ku bijyanye n’amafaranga 500.000 avugwa mu kirego, abarega n’ababahagarariye bavuga ko ibibanza byari bitatu, ariko icya gatatu Hakizimana Vincent akakigurisha uwitwa Kayonga Jean Marie Vianney, amafaranga yavuyemo akaba ariyo yabitswe ku Murenge wa Nyarugunga bisabwe na Mukantaganzwa, nyina w’abarega.

[28] Me Nduwamungu Jean Vianney uhagarariye Iraguha Spéçiose na Hakizimana Vincent yatanze ibisobanuro bikurikira:

a. Kayitsinga Emmanuel n'umugore we w’isezerano, ndetse n’abana babiri bari barabyaranye, bishwe muri Jenoside yakorewe Abatutsi, bapfa nta wundi mwana basize, nta n'uwo bemeye ko babyaye hanze. N’igihe izungura ryakorwaga ku wa 17/12/2000, nta bana bari bahari bazwi ko bakomoka kuri Kayitsinga Emmanuel cyangwa kuri Mukandekezi Emeriane, ahubwo Urukiko rwaje kwemeza ko Uwiduhaye Maurice na Uwineza Marie la Douce ari abana ba Kayitsinga Emmanuel ku wa 30/06/2006, nyuma y’imyaka 6 izungura rikozwe.

b. N’ubwo Uwiduhaye Maurice ahakana ko izungura ryo ku wa 17/12/2000 ryabayeho, hari inyandiko yakozwe mu buryo n’inzira bikurikije amategeko, ikaba ari inyandiko bwite nkuko bisobanurwa n’ingingo ya 14 y’Itegeko N°15/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo. Ingingo ya 15 y’iryo Tegeko iteganya ko inyandikobwite “iba gihamya kugeza igihe ivugurujwe n’ibindi bimenyetso byose byemerwa n’amategeko”.

c. Ibyo Uwiduhaye Maurice yita ibimenyetso by’uko yari asanzwe azwi ko ari umwana wa Kayitsinga Emmanuel (possession d’état), birimo icyo yise icyemezo cy’uko yigaga muri ESA Nyarugunga aba kwa Nyirakuru Iraguha Spéçiose, nta shingiro byahabwa kuko iyo aba koko yarahabaye, Nyirakuru atari kujya gutambamira urubanza No RC 0059/06/TGI/NYGE ahakana ko abo bana atari bene Kayitsinga Emmanuel.

d. Abo Uwiduhaye Maurice yita ko ari abatangabuhamya babajijwe mu rubanza No RCA 0059/06/TGl/NYGE, ni bamwe mu baryozwaga imitungo ya Kayitsinga Emmanuel, bakaza kumvikana ko nibamutangira ubuhamya mu rukiko na we azabitura kubasonera kwishyura iyo mitungo.

e. Inyandiko abarega bavuga ko ari iy'Inzego z'Ibanze zakoze zibereka imitungo ya se, ni inyandiko yakozwe ku wa 21/04/2008 yashyiraga mu bikorwa ibyavuye mu rubanza No RCA 0059/06/TGl/NYGE rwo ku wa 10/11/2006 rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko babyarwa na Kayitsinga Emmanuel ; iyo nyandiko na yo ikaba yarakozwe nyuma y'imyaka 8 habayeho izungura, akaba atari ikimenyetso kigaragaza ko igihe izungura ryabaga mu 2000, Uwiduhaye Maurice na Uwineza Marie la Douce bari bazwi ko ari abana ba Kayitsinga Emmanuel.

f. Kuba Uwiduhaye Maurice yaravuze ko bafite ibyangombwa by'umutungo uburanwa kandi ko ubabaruyeho, si ikimenyetso kigaragaza ko bari bazwi ko ari abana ba Kayitsinga Emmanuel, kuko babyiyandikishijeho ku wa 07/06/2010, hashize imyaka icumi (10) izungura ribaye, babihabwa mu 2011.

g. Ku bijyanye n'abatangabuhamya babajijwe n'Urukiko bakemeza ko babonaga Mukantaganzwa Léonille azanye abana kwa Iraguha Spéçiose, umwe muri bo yabajijwe igihe yaba yaraboneye abo bana avuga ko ari mu 2001, nyuma y'igihe izungura rikozwe (2000), bisobanuye ko igihe ryakorwaga, abo bana batari bazwi ko ari aba Kayitsinga Emmanuel.

h. Uburenganzira bw'abana babyawe na Kayitsinga Emmanuel butangira igihe byemerejwe n'urukiko ko ari we se, ni ukuvuga kuva ku wa 30/06/2006. Bivuze ko ibyo bagiraho uburenganzira ari umutungo waba utari wagabanywa (indivision) kuva aho imanza zabemereje zaciriwe.

[29] Ku byavuzwe n'abatangamakuru, Me Nduwamungu Jean Vianney avuga ko bose bemeje ko izungura ryabaye, kandi bose bahuriza ku kuba abazunguye bataragabanye mu buryo bungana, kuko Munyagihe Eliabu ariwe wafashe igice kinini; ibyo bikaba bigaragaza ko inyandiko y'izungura ifite agaciro.

[30] Me Murigande Jean Claude wunganira Mukamana Edisa, Mwisigye John, Mukakayumba Immaculée, Habimana Augustin, Kankindi Nina, Gasana Callixte, Sibomana Alphonse, Mukarugwiza Florentine, Kwizera Fabrice na Biraro Christine, avuga ko umutungo uburanwa ugizwe n'ubutaka wagiye uhererekanywa ukaba waragurishijwe n'abawuzunguye ku buryo bwemewe n'amategeko. Avuga kandi ko amaze kubona ibikubiye mu rubanza rw'akarengane katanzwe na Uwiduhaye Maurice na Uwineza Marie la Douce, asanga ibyo baregera nta shingiro byahabwa, kuko igihe izungura ryakorwaga bari bataremezwa nk'abana ba Kayitsinga Emmanuel.

[31] Avuga ko muri ubwo butaka bwagiye buhererekanywa, Kwizera Fabrice na BIRARO Christine bafitemo inzu; Mukamana Edisa, Sibomana Alphonse, Mukarugwiza Florentine, Habimana Augustin na Kankindi Nina nabo bakaba bafitemo inzu.

[32] Ku byavuzwe n'abatanze amakuru, Me Murigande Jean Claude avuga ko byerekana ukuri kose kuko bemeje ko izungura ryabayeho, kandi bemeza ko buri ruhande rwari ruhagarariwe.

[33] Me Murigande Jean Claude avuga kandi ko Urukiko rusanze izungura ritarabayeho n'ubwo ku bw'ibanze asanga ryarabayeho, abagiye bagurisha hagati yabo basubizanya cyangwa abaguze bagasubizwa agaciro. Avuga ko ubu batazi agaciro ibibanza birimo bigezeho, akaba asaba Urukiko ko bibaye ngombwa hakoreshwa amagenagaciro ya buri mutungo.

UKO URUKIKO RUBIBONA

[34] Mu gusubiza ikibazo cyo kumenya niba izungura ryakozwe ku wa 17/12/2000 ryateshwa agaciro kugirango Uwiduhaye Maurice na Uwineza Marie la Douce babe aribo bazungura umutungo wasizwe na Kayitsinga Emmanuel, harabanza gusuzumwa niba iryo zungura ryarabayeho kuko abarega bavuga ko ritabaye. Mu gihe byagaragara ko ryabayeho, hasuzumwe ikibazo cyo kumenya niba, igihe ryabaga, Uwiduhaye Maurice na Uwineza Marie la Douce bari bazwi nk'abazungura ba Kayitsinga Emmanuel ku buryo abamuzunguye ku wa 17/12/2000 baba barabikoze bagamije kubaheza mu mutungo w'umubyeyi wabo.

- **Ku bijyanye no kumenya niba izungura ryo ku wa 17/12/2000 ryarabayeho**

[35] Mu nyandiko zigize dosiye, harimo iyitwa "Inama y'izungura hagati y'umuryango wa Kayitsinga Emmanuel na Mukandekezi Emeriane yo ku wa 17/12/2000". Muri iyo nyandiko, hagaragaramo ko inama y'umuryango yateranye irimo abagize imiryango ku mpande zombi, abagabo batanzwe ku mpande zombi, Umuyobozi (Responsable) wa Nyarugunga ndetse n'umwanditsi w'inama. Iyo nyandiko igaragaza kandi ko hagabanywe isambu ingana na 100 m kuri 44 m, n'indi ingana na 38 m kuri 28 m, abasimbura bo kwa Kayitsinga Emmanuel bagafata kimwe cya kabiri, n'abo kwa Mukandekezi Emeriane bagafata kimwe cya kabiri. Inyandiko igaragaza nanone ko inama y'umuryango yahaye Hakizimana Vincent uburenganzira bwo gucungira umutungo kwa Munyagihe Eliabu.

[36] Urukiko rwahamagaje abavugwa muri iyi nyandiko batari ababuranyi, nk'uko bagaragara mu gika cya 24 cy'urubanza, bose bemeza ko inama y'izungura yo ku wa 17/12/2000 yabaye, ko bari bayirimo, kandi ko ibigaragara mu nyandiko aribyo byayivugiwemo.

[37] Ku bijyanye no kuba Munyagihe Eliabu yarafashe isambu ingana na m 100 kuri m 44, iruta iyafashwe na Iraguha Spéçiose ingana na m 38 kuri m 28, kandi mu nyandiko y'izungura handitsemo ko bagabana mu buryo bungana, abatanze amakuru bose uretse Mukagahame Domithille, bemeje ko igihe cyo kugabana abazunguye bumvikanye ko Munyagihe Eliabu afata isambu nini, Iraguha Spéçiose agafata intoya ariko akazongeraho ubutaka bugize umunani wa Kayitsinga Emmanuel buherereye aho avuka i Huye. Urukiko rusanga ibyo impande zombi zumvikanyeho nta tegeko ryabibabuzaga, bikaba kandi bitavanaho kuba inama y'izungura yarabaye cyangwa ngo biyiteshe agaciro.

[38] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga izungura ryo ku wa 17/12/2000 ryarabayeho.

- **Kumenya niba igihe izungura ryabaga, Uwiduhaye Maurice na Uwineza Marie la Douce bari bazwi nk'abazungura ba Kayitsinga Emmanuel ku buryo abamuzunguye ku wa 17/12/2000 baba barabikoze bagamije kubaheza mu mutungo w'umubyeyi wabo.**

[39] Ingingo ya 50 y'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'abashyingiranywe, impano n' izungura, ryakoreshwaga igihe habaga izungura ku wa 17/12/2000, yateganyaga ko abana amategeko mbonezamubano yemera ko ari aba nyakwigendera, bazungura ku buryo bungana nta vangura hagati y'umwana w'umuhungu n'uw'umukobwa.

[40] Ku bijyanye no kumenya abana amategeko mbonezamubano yemera ko ari aba nyakwigendera, Itegeko N° 42/1988 ryo ku wa 27/10/1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano ritandukanya ibimenyetso byemeza ko umuntu akomoka ku bashyingiranywe (mu buryo bwemewe n'amategeko), n'ibyemeza inkomoko ku bana bavuka ku batarashyingiranywe.

[41] Ku bireba abakomoka ku bashyingiranywe, ingingo ya 307 y'Itegeko N° 42/1988 ryo ku wa 27/10/1988 rimaze kuvugwa, iteganya ko kugirango abantu bemerweho ko bakomoka ku bashyingiranywe bigaragazwa n'inyandiko iri mu bitabo by'irangamimerere. Ingingo ya 308 y'iryo Tegeko yo igateganya ko iyo inyandiko y'amavuko ibuze, kuba umuntu asanzwe azwiho ko akomoka ku bashyingiranywe (la possession constante de l'état d'enfant légitime) bihagije kugirango byemezwe ko abakomokaho.

[42] Ku bireba abakomoka ku batarashyingiranywe, kugirango hemezwe uwo bakomokaho, hashobora kubaho kwemera umwana nk'aho yavutse ku bashyingiranywe (légitimation), bigasaba ko se na nyina babemera mbere yo gushyingiranwa, igihe bashyingiranwa (dans l'acte de célébration du mariage), cyangwa nyuma yaho (ingingo ya 318 y'Itegeko N° 42/1988 ryo ku wa 27/10/1988 ryavuzwe haruguru). Hashobora kandi kubaho kwemera umwana (reconnaissance) bikozwe mu nyandikompano (ingingo ya 324 y'Itegeko rimaze kuvugwa). Hashobora nanone kubaho ikirego cy'umwana ushaka kugira se (recherche de paternité) cyangwa kugira nyina (recherche de maternité).

[43] Hakurikijwe ibiteganywa n'ingingo ya 329 y'Itegeko N° 42/1988 ryo ku wa 27/10/1988 ryavuzwe haruguru, ikirego kigamije kwerekana nyina w'umwana kiremerwa iyo umwana asanganywe imimerere izwi (possession d'état). Ku bijyanye n'ikirego cy'umwana ushaka kugira se, ingingo ya 328 y'Itegeko N° 42/1988 ryo ku wa 27/10/1988 rimaze kuvugwa, iteganya ko cyemerwa cyane cyane muri ibi bihe bikurikira:

a. Iyo nyina w'umwana yatwawe ku ngufu, iyo yagumishijwe ahantu afungiwe baramufashe cyangwa yarasambanyijwe ku ngufu;

b. Iyo nyina w'umwana yasambanyijwe bakoresheje uburiganya, igitugu, bamusezeranya ko bazamurongora cyangwa se bazamusaba;

c. Iyo nyina w'umwana yabanye n'umugabo batashyingiranywe;

d. Iyo hari inyandiko cyangwa imvugo idashidikanywa byemeza ko umugabo amurera;

e. Iyo umugabo yemeye gufata neza umwana, akamurera, akamugenera ibintu bye bwite nk'aho ari se.

[44] Mu mpamvu zivugwa n'itegeko zituma ikirego cy'umwana ushaka kugira se cyemerwa, ntihavugwamo ku buryo bweruye kuba umwana asanganywe imimerere izwi (possession d'état), bivuga ko atari ikimenyetso kihagije nk'uko bimeze ku kirego kigamije kwerekana nyina w'umwana.

[45] Ingingo z'Itegeko N° 42/1988 ryo ku wa 27/10/1988 zavuzwe mu bika bibanza, zumvikanamo ibintu by'ingenzi bikurikira:

a. Kugirango umuntu yemerweho ko akomoka ku bashyingiranywe, bigaragazwa n'inyandiko iri mu bitabo by'irangamimerere. Iyo iyo nyandiko ibuze, kuba umuntu asanzwe azwiho ko akomoka ku bashyingiranywe (la possession constante de l'état d'enfant légitime), biba bihagije kugirango byemezwe ko abakomokaho.

b. Ku bijyanye no kwemeza ko umuntu akomoka ku batarashyingiranywe:

i. Itegeko ryateganyaga inzira eshatu:

- Inzira yo kwemera umwana nk'aho yavutse ku bashyingiranywe (légitimation), iyo ababyeyi batari barashyingiranywe ariko nyuma bakaza gushyingiranwa.
- Inzira yo kwemera umwana (reconnaissance) bikozwe mu nyandikompano.
- Iyo izo nzira zombi zitabayeho, hateganyijwe inzira y' ikirego cy'umwana ushaka kugira se (recherche de paternité) cyangwa kugira nyina (recherche de maternité).

ii. Kuba umwana asanganywe imimerere izwi (possession d'état), ntibyemeza ubwabyo ko umwana akomoka ku mubyeyi runaka iyo ababyeyi batashyingiranywe (la possession d'état n'établit pas la filiation naturelle), ahubwo biba ikimenyetso mu rubanza rugamije kwemeza nyina cyangwa se w'umwana. Biba ari ikimenyetso kihagije kugirango ikirego kigamije kwemeza nyina w'umwana cyemerwe, bikaba n'ikimenyetso ariko kitihagije kugirango ikirego kigamije kwemeza se w'umwana cyemerwe.

[46] Ibyateganywaga n'ingingo z'Itegeko N° 42/1988 ryo ku wa 27/10/1988 zimaze kuvugwa ku bijyanye no kwemeza ko umuntu akomoka ku batarashyingiranywe, si umwihariko w'u Rwanda. Mu Gihugu cy'Ububiligi, kwemeza ko umuntu akomoka ku mubyeyi w'umugabo iyo ababyeyi batashyingiranywe, bikorwa binyuze mu nzira yo kwemera umwana (reconnaissance). Iyo bidakozwe bityo, binyura mu nzira y' urubanza. Muri icyo Gihugu, kuba umwana uvuka ku babyeyi batashyingiranywe asanganywe imimerere izwi, ntibyemeza ubwabyo ko akomoka ku mubyeyi w'umugabo[4].

[47] Muri uwo murongo, umuhanga mu mategeko Yves-Henri LELEU avuga ko kuba umwana asanganywe imimerere izwi, biba ikimenyetso mu kirego kigamije kwemeza se w'umwana; icyo kimenyetso kitaboneka, hakiyambazwa ibindi[5].

[48] Umuhanga mu mategeko M.T. Meulders-Klein avuga ko uburyo bwonyine bwo kwemeza se w'umwana iyo ababyeyi batashyingiranywe, ari ukwemera umwana ku bushake, no gutanga

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[4] La filiation paternelle hors mariage peut être établie par une reconnaissance volontaire de l'enfant par son père naturel. A défaut, elle peut être établie par un jugement déclaratif, rendu par le tribunal de première instance. En revanche, en droit belge, la possession d'état d'enfant naturel n'est pas un mode autonome d'établissement de la paternité naturelle; Article publié par le CDPF -Centre de Droit Privé Fondamental, 2011, p.4, consulté le 12/ 06/ 2023.
Lorsque le père naturel n'a pas reconnu l'enfant, une action peut être exercée contre lui devant le tribunal de première instance aux fins d'établir la filiation à son égard. Si la paternité est prouvée, elle est établie par un jugement déclaratif; la possession d'état de l'enfant peut servir de preuve de la paternité (art.324 du code civil); Ibidem, p. 5.

[5] Action en recherche de paternité. La possession d'état de l'enfant à l'égard du père prétendu prouve la paternité (art. 324, al.1er). A défaut de possession d'état, la preuve de la paternité est rapportée par toutes voies de droit; Yves- Henri LELEU, Droit des personnes et des familles, Bruxelles, 4 ème édit., Larcier, 2020, p. 637, N° 675.

ikirego kigamije kwemeza se w'umwana[6]. Asobanura ko ibijyanye no kuba umwana asanganywe imimerere izwi, byashyizwe mu gitabo cy'amategeko mbonezamubano mu gice kerekeranye n'ibirego bigamije kugaragaza uwo umuntu akomokaho, kubera ko kitakiri ikimenyetso cyemeza inkomoko hatabaye urubanza, ahubwo ari ikimenyetso mu rubanza rugamije kwemeza nyina cyangwa se w'umwana...[7]. Avuga ko kuba ibijyanye no kuba umwana asanganywe imimerere izwi byaravanywe mu bimenyetso byemeza inkomoko hatabaye urubanza, bisobanurwa n'uko ari ikimenyetso gisaba igihe kugirango kibeho, kikaba atari ikimenyetso kizewe [8].

[49] Icyumvikana mu ngingo z'amategeko zavuzwe haruguru, zirebewe hamwe n'ibisobanuro bitangwa n'abahanga mu mategeko, ni uko:

a. Abana amategeko mbonezamubano yemera ko ari aba nyakwigendera, aribo bamuzungura;

b. Kwemeza ko umwana akomoka ku mubyeyi w'umugabo iyo ababyeyi batashyingiranywe, binyura mu nzira yo kumwemera ku bushake; ibyo byaba bitarakozwe, hakabaho ikirego kigamije kwemeza se w'umwana.

c. Kuba umwana uvuka ku babyeyi batashyingiranywe asanganywe imimerere izwi (possession d'état), biba gusa ikimenyetso mu rubanza rugamije kwemeza se, ariko ubwabyo ntibyashingirwaho ngo hemezwe se hatabaye urubanza.

[50] Ku bijyanye n'uru rubanza, Uwiduhaye Maurice na Uwineza Marie la Douce bemejwe ko ari aba Kayitsinga Emmanuel mu rubanza Nº RCA 0059/06/TGI/NYGE, rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 10/11/2006, ariko bakavuga ko mbere y'uko izungura ryo ku wa 17/12/2000 riba, bari basanganywe imimerere izwi nk'abamukomokaho (possession d'état).

[51] Bitabaye ngombwa gusuzuma niba igihe izungura ryabaga ku wa 17/12/2000 bari basanganywe imimerere izwi nk'abakomoka kuri Kayitsinga Emmanuel, Urukiko rusanga hakurikijwe ibisobanuro byatanzwe haruguru, kugira imimerere isanzwe izwi bitarashoboraga kwemeza ubwabyo ko ari bene Kayitsinga Emmanuel hatabayeho urubanza. Urukiko rusanga ahubwo, ari ibyashoboraga gukoreshwa nk'ikimenyetso mu rubanza rwemeje ko ari abana ba Kayitsinga Emmanuel.

[52] Urukiko rusanga kuva aho urubanza Nº RCA 0059/06/TGI/NYGE rwavuzwe haruguru ruciriwe ku wa 10/11/2006, Uwiduhaye Maurice na Uwineza Marie la Douce aribwo bemejwe ko ari aba Kayitsinga Emmanuel, akaba ari nabwo bagize uburenganzira bwo kumuzungura. Bivuga rero ko igihe izungura ryo ku wa 17/12/2000 ryabaga, batari bazwi nk'abazungura ba Kayitsinga

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[6] Les seuls modes d'établissement de la paternité hors mariage restent, avant comme après la réforme: la reconnaissance volontaire, l'action en recherche de paternité, M. T. Meulders-Klein, L'établissement et les effets personnels de la filiation selon la loi belge du 31 mars 1987, annales de droit de Louvain, dans Revue Trimestrielle de Droit Belge, Tome XLVII 3-4/1987, p. 48, Nº 85.

[7] La définition de la possession d'état et de ses éléments constitutifs se trouve reléguée à l'article 331nonies du Code civil, c'est-à-dire au chapitre consacré aux actions relatives à la filiation, parce que celle-ci a cessé d'être un mode de preuve extra-judiciaire de la filiation pour n'être qu'un élément de preuve judiciaire tant de la maternité (art. 314, al. 4, C. civ.) que de la paternité (art. 324, al. 1, C. civ.) …….; Ibidem, p.68, Nº 129.

[8] L'éviction de la possession d'état comme mode de preuve extra-judiciaire de la filiation se justifiait sans doute par le caractère peu commode de cette preuve qui demande en outre du temps pour se constituer et demeure relativement incertaine; Ibidem, p. 24, Nº 38.

Emmanuel, bityo Urukiko rukaba ntaho rwahera rwemeza ko abamuzunguye babikoranye uburyarya kugira ngo babaheze mu mutungo w'umubyeyi wabo.

[53] Mu ngingo zikurikira, Urukiko rurasuzuma aho uburenganzira bwa Uwiduhaye Maurice na Uwineza Marie la Douce ku mutungo uzungurwa butangirira, niba bazungura gusa ibyari bihari kuva igihe bemerejwe n'Urukiko, cyangwa niba bashobora no gusaba ko ibyagabanywe bataremezwa bigaruka mu mutungo uzungurwa bakabigiraho uruhare.

 Kumenya niba Uwiduhaye Maurice na Uwineza Marie la Douce bafite uburenganzira bwo kuzungura gusa umutungo wari uhari kuva igihe bemerejwe nk'abakomoka kuri Kayitsinga Emmanuel ku wa 10/11/2006, cyangwa niba bashobora no gusaba ko ibyagabanywe ku wa 17/12/2000 bigaruka mu mutungo w'umubyeyi wabo kugirango babizungure.

[54] Nta ngingo mu 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'abashyingiranywe, impano n' izungura, yasubizaga iki kibazo.

[55] Ingingo ya 9 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 aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko.

[56] Urukiko Rusesa Imanza rwo mu Bufaransa, mu rubanza rwaciwe ku wa 11/04/2018, rwemeje ko kuba hari umuzungura wamenyekanye byemejwe n'Urukiko nyuma y'uko izungura rishyirwa mu bikorwa, bidashobora gutesha agaciro izungura ryakozwe rikarangira hagati y'abari bafite uburenganzira bwo kuzungura mbere y'uko hatangwa ikirego kigamije kwemeza se w'umwana[9] (muri urwo rubanza, hari umubyeyi w'umugabo wapfuye ku wa 27/04/1996, izungura ry'umutungo asize rikorwa ku wa 28/10/1996 hagati y'abari abazungura icyo gihe, nyuma yaho ku wa 10/11/2005 habaho urubanza rwemeje ko nyakwigendera ari se w'uwaregaga, uyu yongera gutanga ikirego ku wa 10/08/2010 asaba kuzungura umutungo wa nyakwigendera).

[57] Urukiko rusanga ibyasuzumwe mu rubanza rumaze kuvugwa, bihura n'ibisuzumwa muri uru rubanza Uwiduhaye Maurice na Uwineza Marie la Douce baregamo abazunguye Kayitsinga Emmanuel mbere y'uko Urukiko rwemeza ko ari abana be, rukaba rwemeranya n'umwanzuro warufashwemo. Koko rero, igihe izungura ry'umutungo wasizwe na Kayitsinga Emmanuel ryabaga mu mwaka wa 2000, Uwiduhaye Maurice na Uwineza Marie la Douce bari bataremezwa nk'abamukomokaho, bivuga ko bari bataremezwa nk'abazungura be.

[58] Urukiko rurasanga rero, Uwiduhaye Maurice na Uwineza Marie la Douce badashobora gusaba ko ibyagabanywe ku wa 17/12/2000 bigaruka mu mutungo wa Kayitsinga Emmanuel

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[9] "Mais attendu qu'après avoir énoncé que l'article 887 ancien du code civil ne prévoit la rescision du partage que pour cause de violence et de dol ou lorsqu'un des héritiers établit à son préjudice une lésion de plus du quart, la cour d'appel a exactement retenu que l'erreur, par omission d'un héritier tardivement révélé, ne pouvait entraîner la nullité du partage, intervenu de façon définitive entre toutes les personnes ayant la qualité d'héritier avant l'introduction de l'action en recherche de paternité ; que le moyen n'est pas fondé";

kugirango babizungure, bakaba ahubwo bafite uburenganzira bwo kuzungura umutungo wari uhari kuva igihe bemerejwe nk'abakomoka kuri Kayitsinga Emmanuel ku wa 10/11/2006.

[59] Urukiko rusanga ababuranyi bemeranywa ko nta mutungo utimukanwa wa Kayitsinga Emmanuel wasigaye utazunguwe ku wa 17/12/2000. Rusanga ariko hari amafaranga 500.000 abarega bavuga ko yavuye mu kibanza cya gatatu bari baregeye, Hakizimana Vincent yari yagurishije uwitwa Kayonga[10]. Basobanura ko umubyeyi wabo yayatambamiye mu Murenge wa Nyarugunga ari naho akibitse; abaregwa bakaba batarabivuguruje.

[60] Urukiko rusanga ayo mafaranga 500.000 cyangwa ikibanza akomokaho bitavugwa mu nyandiko y'izungura ryo ku wa 17/12/2000, bivuga ko atigeze azungurwa, akaba rero agomba guhabwa Uwiduhaye Maurice na Uwineza Marie la Douce.

- **Umwanzuro rusange**

[61] Hashingiwe ku ngingo z'amategeko zagaragagajwe no ku bisobanuro byose byatanzwe, Urukiko rurasanga izungura ryakozwe ku wa 17/12/2000 ritateshwa agaciro kugirango Uwiduhaye Maurice na Uwineza Marie La Douce babe aribo bazungura umutungo wasizwe na Kayitsinga Emmanuel. Rurasanga icyo bafiteho uburenganzira ari 500.000 Frw yafatiriwe mu Murenge wa Nyarugunga, kuko atagaragara mu byazunguwe.

B. Ibyerekeye indishyi zisabwa mu rubanza

[62] Me NSABAYEZU Evariste na Me NSABIMANA Jean Baptiste bahagarariye abarega, bavuga ko Urukiko nirusanga ibyo Uwiduhaye Maurice na Uwineza Marie la Douce bavuga bifite ishingiro, rwategeka Iraguha Spéçiose na Hakizimana Vincent kubasubiza amafaranga 2.000.000 yishyuwe Avoka, na 500.000 Frw y'ikurikiranarubanza. Ayo mafaranga akiyongera ku yari yatanzwe mu rubanza Nº RC 0162/13/TGI/NYGE basabye ko imikirize yarwo igumaho.

[63] Me Nduwamungu Jean Vianney uhagarariye Iraguha Spéçiose na Hakizimana Vincent, avuga ko indishyi zisabwa n'abarega zikubiyemo igihembo cy'Avoka ndetse n'amafaranga y'ikurikiranarubanza, nta shingiro zifite.

[64] Hakurikijwe ibigaragara muri IECMS, Gasana Callixte wagobokeshejwe mu rubanza, yatanze ikirego kiregera kwiregura, avuga ko ku mpamvu z'uko abarega bakomeza gushora abagobokeshejwe mu manza z'amaherere, basaba ko buri wese yagenerwa amafaranga 2.000.000 yo guteshwa igihe no gusiragizwa mu manza, hakiyongeraho n'amafaranga 500.000 y'igihembo cy'Avoka azasubizwa buri wese.

UKO URUKIKO RUBIBONA

[65] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka Uwiduhaye Maurice na Uwineza Marie la Douce basaba guhabwa na Iraguha Spéçiose na Hakizimana Vincent batayahabwa, kuko buri wese yagize icyo atsindira mu rubanza.

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[10] Mu rubanza Nº RC 0162/13/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 25/10/2013, abarega bavugaga ko ayo mafaranga akomoka ku kibanza Hakizimana Vincent yaburanye n'uwitwa KAYONGA Jean Marie Vianney wari warengereye ku kibanza cya Kayitsinga (reba para 5).

[66] Urukiko rurasanga 2.000.000 Frw yo guteshwa igihe no gusiragizwa mu manza Gasana Callixte asaba abarega mu kirego kiregera kwiregura (demande reconventionnelle) atayahabwa, kuko yagobokeshejwe ku gahato hatagamijwe kumutesha igihe cyangwa kumusiragiza mu manza nk'uko abivuga, ahubwo ari ukugirango arengere inyungu ze mu rubanza.

[67] Urukiko rurasanga ariko 500.000 Frw Gasana Callixte asaba y'igihembo cy'Avoka yayahabwa, kuko byabaye ngombwa kwiyambaza Avoka umuhagararira mu rubanza, kandi amafaranga asaba akaba ari mu rugero. Urukiko rurasanga ababuranyi ku mpande zombi bagomba gufatanya kuyamwishyura kuko bose bagize icyo batsindirwa, ni ukuvuga ko Uwiduhaye Maurice na Uwineza Marie la Douce bagomba gufatanya kumwishyura 250.000 Frw, Iraguha Spéçiose na Hakizimana Vincent nabo bagafatanya kumwishyura 250.000 Frw.

[68] Ku birebana n'abandi bagobokeshejwe mu rubanza Gasana Callixte asabira amafaranga y'igihembo cy'Avoka, Urukiko rurasanga ntayo bagomba guhabwa kubera ko atigeze agaragaza ko hari ubutumwa bari bamuhaye kugira ngo abatangire ikirego.

III. ICYEMEZO CY'URUKIKO

[69] Rwemeje ko ikirego rwashyikirijwe na Uwiduhaye Maurice na Uwineza Marie la Douce cyo gusubirishamo ku mpamvu z'akarengane urubanza Nº RCA 0637/13/HC/KIG, rwaciwe n'Urukiko Rukuru ku wa 13/05/2014, gifite ishingiro kuri bimwe.

[70] Rwemeje ko imikirize y'urubanza Nº RCA 0637/13/HC/KIG, rwaciwe n'Urukiko Rukuru ku wa 13/05/2014, ihindutse kuri bimwe;

[71] Rwemeje ko izungura ryakozwe ku wa 17/12/2000 rigumana agaciro karyo;

[72] Rwemeje ko nta burenganzira Uwiduhaye Maurice na Uwineza Marie la Douce bafite ku mitungo yazunguwe ku wa 17/12/2000;

[73] Rutegetse ko amafaranga ibihumbi magana atanu (500.000) yafatiriwe mu Murenge wa Nyarugunga ahabwa Uwiduhaye Maurice na Uwineza Marie la Douce;

[74] Rutegetse Uwiduhaye Maurice na Uwineza Marie la Douce gufatanya kwishyura Gasana Callixte amafaranga ibihumbi magana abiri na mirongo itanu (250.000) y'igihembo cy'Avoka;

[75] Rutegetse Iraguha Spéçiose na Hakizimana Vincent gufatanya kwishyura Gasana Callixte amafaranga ibihumbi magana abiri na mirongo itanu (250.000) y'igihembo cy'Avoka.