HAKUZIMANA v MUNYANEZA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00003/2022/SC (Ntezilyayo, P.J, Nyirinkwaya, Karimunda, J.) 05 Gicurasi 2023]

Amategeko agenga imanza z'imbonezamubano – Imanza z'imitungo –Uburenganzira bwo gukurikirana umutungo - Nyir'umutungo utimukanwa afite uburenganzira bwo kuwukurikirana kuwo awusanganye, kandi si ngombwa ko habanza kubaho gusaba gutesha agaciro amasezerano y'ubugure yabaye hagati y'uwo awusanganye n'abawugurishije.

Amategeko agenga imanza z'imbnonezamubano – Imanza z'imitungo - Ingaruka zo kugurisha umutungo uhuriweho - Igurisha ry'umutungo uhuriweho rikozwe n'umwe mu bawusangiye, riba rifite agaciro ku baguze ku bireba gusa igipande kigize umugabane w'uwagurishije.

Amategeko agenga imanza z'imbnonezamubano – Imanza z'imitungo - Gutesha agaciro ibyangombwa by'umutungo - Ibyangombwa by'umutungo bishobora guteshwa agaciro iyo hari ugaragaje ko ari we nyirawo.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rwisumbuye rwa Musanze aho Ntakirutinka yareze Munyaneza avuga ko babanye nk'umugore n'umugabo batarasezeranye kuva mu mwaka wa 2005 kugeza mu wa 2015, asaba ko Urukiko rwabagabanya imitungo bafatanyije gushaka mu gihe babanaga. Munyaneza we avuga ko nta ruhare Ntakirutinka afite kuri iyo mitungo kuko yayishatse wenyine ndetse akaba yaranayigurishije uwitwa Hakuzimana kandi akaba yaranayiyandikishijeho. Urukiko rwisumbuye rwa Musanze rwategetse ko Ntakirutinka atsinzwe kuko nta bimenyetso yagaragaje byerekana ko iyo mitungo yayishakanye na Munyaneza.

Urega yajuriye mu Rukiko Rukuru avuga ko Urukiko rwisumbuye rwirengagije ibimenyetso yarugaragarije. Urwo rukiko rwemeje ko nta ruhare Ntakirutinka afite ku mutungo UPI 4/03/08/04/722 naho ku birebana n'imitungo ibaruye kuri UPI 4/03/08/04/723, UPI 4/03/08/04/6286 na UPI 4/03/08/04/6287, rwemeje ko bagomba kuyigabana. Urwo rukiko rwemeje kandi ko amasezerano y'ubugure Munyaneza yagiranye na Hakuzimana nta gaciro afite kuko Munyaneza yagurishije wenyine umutungo yari afatanyije na Ntakirutinka.

Munyaneza yajuririye urwo rubanza mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru, rwakoze amakosa yo gushingira ku kimenyetso cyatanzwe nyuma y'iburanisha. Hakuzimana yatanze ubujurire bwuririye ku bundi avuga ko Urukiko Rukuru, rwaciriye urubanza ku kitararegewe. Ku birebana n'ubujurire bwa Munyaneza n'ubwa Hakuzimana, Urukiko rwasanze amasezerano y'ubugure bagiranye ataragombaga guteshwa agaciro kandi bitari byararegewe ku rwego rwa mbere, ariko ko ntacyo bihindura ku kuba Ntakirutinka yarahawe uruhare ku mitungo iburanwa.

Hakuzimana ntiyanyuzwe n'iyo mikirize y'urubanza yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urubanza rusubirwamo ku mpamvu z'akarengane maze ruhabwa Urukiko rw'Ikirenga. Mu iburansiha Urukiko rw'Ikirenga rwasuzumye ibibazo birimo icyo kumenya niba Urukiko rw'Ubujurire rwaratesheje agaciro amasezerano y'ubugure yabaye hagati ya Munyaneza na Hakuzimana kandi bitari byaregewe n'icyo kumenya niba Kabera yagumana imitungo ibaruye kuri UPI :4/03/08/04/723, UPI: 4/03/08/04/6286 na UPI: 4/03/08/04/6287kuko yayiguze na Hakuzimana mu buryo bukurikije amategeko cyangwa agasubizwa 70.899.275 Frw.

Hakuzimana, Munyaneza na Kabera bose bavuga ko Urukiko rw'Ubujurire rwabonye ko Urukiko Rukuru, Urugereko rwa Musanze rwatesheje agaciro amasezerano y'ubugure Munyaneza na Hakuzimana bakoranye kandi atari cyo cyari cyaregewe, aho guhita rutesha agaciro urubanza rwaciwe n'Urukiko Rukuru, rubirengaho maze narwo ruyatesha agaciro kuko rwemeje ko Munyaneza na Ntakirutinka bagabana amazu aburanwa. Ntakirutinka avuga ko atari kuregera gutesha agaciro amasezerano kuko ubusanzwe utaragize uruhare mu masezerano adashobora gusaba ko ateshwa agaciro, ariko ko ntacyamubuzaga kuregera umutungo afatanyije na Munyaneza ari nabyo byakozwe bikagira ingaruka ku masezerano avugwa dore ko iyo uwaregeye umutungo afiteho uruhare awuhawe, amasezerano icyagurishijwe ashingiyeho ata agaciro kuko nyine kiba kitakiriho n'uwaguze akaba atagishoboye kucyegukana.

Ku kijyanye no kumenya niba Uwaguze iyo mitungo agomba kuyigumana, Hakuzimana avuga ko mu gihe Urukiko rw'Ubujurire rwari rwemeje ko Munyaneza na Ntakirutinka bafitanye imitungo, rwagombaga gutegeka Munyaneza guha Ntakirutinka ½ cy'ikiguzi yishyuwe na Hakuzimana, ariko ubugure bukagumaho cyangwa se rugategeka ko Ntakirutinka amusubiza agaciro imitungo ifite ubu. Munyaneza we avuga ko yagurishije iyo mitungo kugira ngo yishyure Banki inguzanyo yari yaratse yubaka inzu zagurishijwe. Ntakirutinka yiregura avuga ko nta kigaragaza ko Munyaneza yagurishije imitungo iburanwa kugira ngo yishyure umwenda yafashe mu Agaseke Bank bityo no mu gihe haba habayeho gusubiza Hakuzimana, yasubizwa na Munyaneza kuko amafaranga yayahawe wenyine, hakaba nta n'ikigaragaza ko yishyuraga umwenda wa banki nk'uko abivuga.

Incamake y'icyemezo: 1. Nyir'umutungo utimukanwa afite uburenganzira bwo kuwukurikirana kuwo awusanganye, kandi si ngombwa ko habanza kubaho gusaba gutesha agaciro amasezerano y'ubugure yabaye hagati y'uwo awusanganye n'abawugurishije.

2. Igurisha ry'umutungo uhuriweho rikozwe n'umwe mu bawusangiye, riba rifite agaciro ku baguze ku bireba gusa igipande kigize umugabane w'uwagurishije bityo amasezerano Munyaneza yakoranye na Hakuzimana afite agaciro ku bireba umugabane wa Munyaneza ku mitungo iburanwa, ariko ntako afite ku bireba umugabane wa Ntakirutinka.

Ikirego cyatanzwe cyo gusubirishamo urubanza ku mpamvu z'akarengane, gifite ishingiro kuri bimwe;

Nta mategeko yashingiweho

Imanza zifashishijwe:

RCAA 0117/11/CS, Nibasenge Anathalie, na Nahayo François Xavier rwaciwe n'Urukiko rw'Ikirenga ku wa 24/04/2015,

RCAA 00045/2016/CS, Mukaruhanga Alexis na Nyirahabimana rwaciwe n'Urukiko rw'Ikirenga ku wa 24/04/2015

RS/INJUST/RC 0008/2019/SC, Gahire Athanase na Bagenzi Théogène n'abandi rwaciwe n'Urukiko rw'Ikirenga ku wa 12/11/2021;

RS/INJUST/RC 00007/2020/SC, Twagirayezu Albert na Umumaranyota Agnès rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021.

Urubanza

I. IMITERERE Y'URUBANZA:

[1] Ntakirutinka Béatrice yareze Munyaneza Fabien mu Rukiko Rwisumbuye rwa Musanze avuga ko babanye nk'umugore n'umugabo batarasezeranye kuva mu mwaka wa 2005 kugeza mu wa 2015, asaba ko Urukiko rwabagabanya imitungo bafatanyije gushaka mu gihe babanaga, ibaruye kuri UPI 4/03/08/04/722 na UPI 4/03/08/04/723 yaje kugabanywamo ibice 3, hamwe hakagira UPI 4/03/08/04/6286, ahandi UPI 4/03/08/04/6287, aha gatatu hagasigarana UPI 4/03/08/04/723.

[2] Munyaneza Fabien yireguye avuga ko nta ruhare Ntakirutinka Béatrice yagize mu ishakwa ry'iyo mitungo, ndetse ko imitungo aregera ubu ari iya Hakuzimana Jean Bosco kuko yayimugurishije, akaba yaramaze kuyiherwa ibyemezo by'ubutaka bya burundu bigaragaza ko imwanditseho. Hakuzimana Jean Bosco wagobokeshejwe mu rubanza bisabwe na Ntakirutinka Béatrice nawe yaburanye avuga ko imitungo iburanwa ari iye kuko yayiguze mu buryo bukurikije amategeko.

[3] Urukiko Rwisumbuye rwa Musanze rwaciye urubanza Nº RC 00126/2018/TGI/MUS ku wa 10/10/2019, rwemeza ko ikirego cya Ntakirutinka Béatrice nta shingiro gifite rushingiye ku mpamvu y'uko nta bimenyetso atanga bigaragaza uruhare rwe mu ishakwa ry'imitungo aregera, ko ahubwo ari iya Hakuzimana Jean Bosco wayiguze, rutegeka Ntakirutinka Béatrice guha Munyaneza Fabien na Hakuzimana Jean Bosco 500.000 Frw y'igihembo cya Avoka kuri buri wese.

[4] Ntakirutinka Béatrice yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko urukiko rubanza rutahaye agaciro ibimenyetso yatanze. Hakuzimana Jean Bosco nawe yatanze ubujurire bwuririye ku bundi asaba ko Ntakirutinka Béatrice yategekwa kumuha indishyi yari yasabye ku rwego rwa mbere ntazigenerwe, agahabwa n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'ubujurire.

[5] Urwo rukiko rwaciye urubanza Nº RCA 00097/2019/HC/MUS ku wa 13/07/2020. Ku birebana n'umutungo ubaruye kuri UPI 4/03/08/04/722, rwemeje ko Ntakirutinka Béatrice nta ruhare awufiteho, naho ku birebana n'imitungo ibaruye kuri UPI 4/03/08/04/723, UPI 4/03/08/04/6286 na UPI 4/03/08/04/6287, rwemeje ko yayishakanye na Munyaneza Fabien, bakaba bagomba kuyigabana, rutegeka ko Ntakirutinka Béatrice ahabwa umutungo ubaruye kuri UPI 4/03/08/04/723, naho Munyaneza Fabien agahabwa ubaruye kuri UPI 4/03/08/04/6286 n'ubaruye kuri UPI 4/03/08/04/6287.

[6] Urwo rukiko rwemeje kandi ko amasezerano y'ubugure Munyaneza Fabien yagiranye na Hakuzimana Jean Bosco nta gaciro afite kuko Munyaneza Fabien yagurishije wenyine umutungo yari afatanyije na Ntakirutinka Béatrice, runategeka Munyaneza Fabien guha Ntakirutinka Béatrice 750.000 Frw y'igihembo cya Avoka ku rwego rwa mbere no mu bujurire, 150.000 Frw yatanze kuri expertise, 300.000 Frw y'indishyi z'akababaro zo kumushora mu manza, yose hamwe akaba 1.200.000 Frw.

[7] Munyaneza Fabien yajuririye urwo rubanza mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru, Urugereko rwa Musanze, rwakoze amakosa yo gushingira ku kimenyetso cyatanzwe nyuma y'iburanisha[1], ko rwaciriye urubanza ku kitararegewe, runarucira ku mutungo utari mu maboko y'abawushakanye, ko kandi rwageneye Ntakirutinka Béatrice indishyi bidakwiye.

[8] Hakuzimana Jean Bosco yatanze ubujurire bwuririye ku bundi avuga ko Urukiko Rukuru, Urugereko rwa Musanze rwaciriye urubanza ku kitararegewe, ko kandi rutamugeneye indishyi z'akababaro yari yasabye, asaba kandi ko mu gihe Urukiko rw'Ubujurire narwo rwasanga amasezerano y'ubugure nta gaciro afite, rwategeka ko asubizwa amafaranga yishyuye agura umutungo uburanwa, hiyongereyeho agaciro yawongeyeho. Yasabaga kandi ko Ntakirutinka Béatrice yategekwa kumuha amafaranga y'ikurikiranarubanza n'indishyi zari zategetswe ku rwego rwa mbere.

[9] Ntakirutinka Béatrice nawe yatanze ubujurire bwuririye ku bundi avuga ko Urukiko Rukuru Urugereko rwa Musanze rutagombaga kuvana umutungo ubaruye kuri UPI 4/03/08/04/722 mu bigabanywa, ko kandi habayeho kugabanya imitungo ibaruye kuri UPI: 4/03/08/04/723, UPI 4/03/08/04/6286 na UPI 4/03/08/04/6287 mu buryo butangana, bituma ahabwa imitungo ifite agaciro gake, anasaba indishyi.

[10] Urukiko rw'Ubujurire rwaciye urubanza Nº RCAA 00017/2020/CA ku wa 18/06/2021. Ku birebana n'ubujurire bwa Munyaneza Fabien n'ubwa Hakuzimana Jean Bosco, rwasanze amasezerano y'ubugure bagiranye ataragombaga guteshwa agaciro kandi bitari byaregewe ku rwego rwa mbere, ariko ko ntacyo bihindura ku kuba Ntakirutinka Béatrice yarahawe uruhare ku mitungo iburanwa kuko Urukiko Rukuru, Urugereko rwa Musanze, rwasanze ayifiteho uburenganzira, bityo hakaba ntacyamubuza gukurikirana umutungo we k'uwufite. Urukiko rwakosoye kandi ingano y'amafaranga Munyaneza Fabien yategetswe guha Ntakirutinka Béatrice, rutegeka ko amuha 1.150.000 Frw aho kuba 1.200.000 Frw kuko habaye kwibeshya ku mafaranga yishyuye umugenagaciro.

[11] Ku birebana n'amafaranga Hakuzimana Jean Bosco yasabaga gusubizwa ajyanye n'agaciro umutungo ufite ubu, Urukiko rw'Ubujurire rwasanze nta kirego cyayo yigeze atanga, akaba rero atayasabira kuri urwo rwego kuko byaba ari ikirego gishya gitanzwe mu bujuririre. Ku birebana n'indishyi z'akababaro yasabaga, Urukiko rwasanze atazigenerwa kuko adasobanura akababaro yagize ako ariko n'aho ashingira mu rwego rw'amategeko azisaba. Ku birebana n'amafaranga y'igihembo cya Avoka, Urukiko rwasanze nayo atayagenerwa kuko uwo ayasaba atari we wajuriye ngo bibe byafatwa ko yatumye agira ibyo atanga.

[12] Ku birebana n'ubujurire bwuririye ku bundi bwa Ntakirutinka Béatrice, Urukiko rw'Ubujurire rwemeje ko nta shingiro bufite ku bijyanye n' umutungo ubaruye kuri UPI 4/03/08/04/722, naho ku bijyanye n'imitungo ibaruye kuri UPI 4/03/08/04/723, UPI 4/03/08/04/6286 na UPI 4/03/08/04/6287, rwasanze harabayeho koko kugabanywa mu buryo butangana kuko Ntakirutinka Béatrice yagenewe umutungo ufite agaciro ka 17.109.000 Frw, naho Munyaneza Fabien agenerwa imitungo ifite agaciro ka 33.229.500 Frw, rutegeka ko bagabana mu buryo bungana, buri wese akagumana iyo yagenewe mu rubanza rwajuririwe, ariko Munyaneza Fabien akongerera Ntakirutinka Béatrice 8.060.250 Frw kugira ngo buri wese agire umutungo ufite

[1] Inyemezabwishyu y'Umugenagaciro.

agaciro ka 25.169.255 Frw, ni ukuvuga ½ cy'agaciro k'imitungo itatu kangana na 50.338.500 Frw.

[13] Hakuzimana Jean Bosco ntiyanyuzwe n'iyo mikirize y'urubanza yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urubanza Nº RCAA 00017/2020/CA rusubirwamo ku mpamvu z'akarengane. Mu cyemezo Nº 014/CJ/2022, Perezida w'Urukiko rw'Ikirenga yafashe ku wa 26/01/2022 yemeje ko urwo rubanza rwongera kuburanishwa, ruhabwa Nº RS/INJUST/RC 00003/2021/SC.

[14] Urubanza rwaburanishijwe mu ruhame ku wa 15/11/2022, Hakuzimana Jean Bosco ahagarariwe na Me Habimana Donat, Munyaneza Fabien yunganiwe na Me Kavuyekure Dieudonné, naho Ntakirutimana Béatrice ahagarariwe na Me Uwamahoro Nyiranzayino Christine, uwo munsi Urukiko rwemeza ko Kabera Fidèle agobokeshwa mu rubanza mu nyungu z'ubutabera hagendeye ku makuru yari yatanzwe na Hakuzimana Jean Bosco ko bahererekanyije imitungo iburanwa, akaba ariwe ubu wanditsweho ibyangombwa by'ubutaka.

[15] Iburanisha mu ruhame ryakomeje ku wa 28/03/2023, Hakuzimana Jean Bosco ahagarariwe na Me Habimana Donat, Munyaneza Fabien yunganiwe na Me Kavuyekure Dieudonné, Ntakirutimana Béatrice ahagarariwe na Me Uwamahoro Nyiranzayino Christine, naho Kabera Fidèle wagobokeshejwe mu rubanza ahagarariwe na Me Nzirabatinyi Fidèle.

[16] Muri uru rubanza, hasuzumwe ibibazo bikurikira:

- Kumenya niba Urukiko rw'Ubujurire rwaratesheje agaciro amasezerano y'ubugure yabaye hagati ya Munyaneza Fabien na Hakuzimana Jean Bosco kandi bitari byaregewe;
- Kumenya niba Kabera Fidèle yagumana imitungo ibaruye kuri UPI: 4/03/08/04/723, UPI: 4/03/08/04/6286 na UPI: 4/03/08/04/6287 kuko yayiguze mu buryo bukurikije amategeko cyangwa agasubizwa 70.899.275Frw;
- Ibyerekeye indishyi zisabwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO:

A. Kumenya niba Urukiko rw'Ubujurire rwarateshej agaciro amasezerano y'ubugure yabaye hagati ya Munyaneza Fabien na Hakuzimana Jean Bosco kandi bitararegewe

[17] Me Habimana Donat uhagarariye Hakuzimana Jean Bosco avuga ko Urukiko rw'Ubujurire rwabonye ko Urukiko Rukuru, Urugereko rwa Musanze rwatesheje agaciro amasezerano y'ubugure Munyaneza Fabien na Hakuzimana Jean Bosco bakoranye kandi atari cyo cyari cyaregewe, aho guhita rutesha agaciro urubanza rwaciwe n'Urukiko Rukuru, rubirengaho maze narwo ruyatesha agaciro kuko rwemeje ko Munyaneza Fabien na Ntakirutinka Béatrice bagabana amazu aburanwa.

[18] Me Nzirabatinyi Fidèle uhagarariye Kabera Fidèle avuga ko ashyigikiye imiburanire ya Hakuzimana Jean Bosco kuko yari intumwa ye, ko ubutabera bakeneye n'inyungu bafite ari bimwe.

[19] Me Kavuyekure Dieudonné wunganira Munyaneza Fabien nawe avuga ko Urukiko rw'Ubujurire rwatesheje agaciro amasezerano y'ubugure kandi bitari byaregewe, ndetse ko rwemeje ko Ntakirutinka Béatrice afite uburenganzira bwo kugaruza umutungo kandi nabyo bitararegwe.

[20] Me Uwamahoro Nyiranzayino Christine avuga ko Ntakirutinka Béatrice ahagarariye atari kuregera gutesha agaciro amasezerano kuko ubusanzwe utaragize uruhare mu masezerano adashobora gusaba ko ateshwa agaciro, ariko ko ntacyamubuzaga kuregera umutungo afatanyije na Munyaneza Fabien, ari nabyo yakoze ubwo yasabaga ko Hakuzimana Jean Bosco agobokeshwa mu rubanza.

[21] Avuga kandi ko kuba Urukiko rw'Ubujurire rwarasuzumye ikirego cya Ntakirutinka Béatrice, rugasanga afite uruhare ku mitungo iburanwa, rugategeka ko ahabwa uruhare rwe, bifite ingaruka ku bugure bwa Hakuzimana Jean Bosco kuko iyo uwaregeye umutungo afiteho uruhare awuhawe, amasezerano icyagurishijwe ashingiyeho ata agaciro kuko nyine kiba kitakiriho n'uwaguze akaba atagishoboye kucyegukana.

UKO URUKIKO RUBIBONA:

[22] Mu rubanza Nibasenge Anathalie yaregagamo Nahayo François Xavier[2], uru rukiko, rwifashishije ibisobanuro by'abahanga mu mategeko, rwasobanuye ko nyir'umutungo utimukanwa afite uburenganzira bwo kuwukurikirana kuwo awusanganye, ko kandi atari ngombwa ko habanza kubaho gusaba gutesha agaciro amasezerano y'ubugure yabaye hagati y'uwo awusanganye n'abawugurishije. Ibi bisobanuro byagarutsweho mu buryo burambuye mu rubanza Mukaruhanga Alexis yaburanaga na Nyirahabimana Emerthe[3], aho rwasobanuye ko ikirego kigamije gutesha agaciro igurisha ry'ikintu cy'undi gitangwa gusa n'uwaguze, ariko ko nyir'ikintu ashobora gutanga ikirego kigamije kugaruza ibye (action en revendication). Ibi byumvikanisha ko nubwo nta bubasha Ntakirutinka Béatrice afite bwo kuregera gutesha agaciro amasezerano y'ubugure Munyaneza Fabien yakoranye na Hakuzimana Jean Bosco, ariko afite ubwo kuregera kugaruza umutungo avuga ko afiteho uruhare wagurishijwe atabizi.

[23] Urukiko rurasanga, nk'uko Urukiko rw'Ubujurire rwabisobanuye, kuba nyuma yo kuregera kugabana umutungo afitanye na Munyaneza Fabien, Ntakirutinka Béatrice yaramenye ko wagurishijwe agasaba ko Hakuzimana Jean Bosco wawuguze agobokeshwa kugira ngo atazatambamira imikirize y'urubanza mu gihe yatsindira kugabana imitungo yashakanye na Munyaneza Fabien akabyemererwa, byumvikanisha ko usibye gusaba kugabana umutungo yashakanye na Munyaneza Fabien, Ntakirutinka Béatrice yanakurikiranye ufite imitungo iburanwa (revendication).

[24] Urukiko rurasanga rero kuba Urukiko rw'Ubujurire rwarasanze Ntakirutinka Béatrice yararegeye kugaruza umutungo afatanyije na Munyaneza Fabien, ikirego cye kigasuzumwa, umwanzuro ufashwe ukagira ingaruka ku bugure bwabaye hagati ya Munyaneza Fabien na Hakuzimana bitafatwa nko gutesha agaciro amasezerano kandi bitararegewe.

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[2] Urubanza Nº RCAA 0117/11/CS rwaciwe ku wa 24/04/2015, ibika bya 17-22.

[3] Urubanza rubanziriza urundi mu rubanza Nº RCAA 00045/2016/CS rwaciwe ku wa 24/04/2015, ibika bya 28-32.

B. Kumenya niba Kabera Fidèle akwiye kugumana imitungo iburanwa kuko Hakuzimana Jean Bosco bayihererekanyije yayiguze mu buryo bukurikije amategeko cyangwa agasubizwa agaciro ifite ubu.

[25] Me Habimana Donat wunganira Hakuzimana Jean Bosco avuga ko mu gihe Urukiko rw'Ubujurire rwari rwemeje ko Munyaneza Fabien na Ntakirutinka Béatrice bafitanye imitungo ibaruye kuri UPI 4/03/08/04/723, UPI 4/03/08/04/6286 na UPI 4/03/08/04/6287, rwagombaga gutegeka Munyaneza Fabien guha Ntakirutinka Béatrice ½ cy'ikiguzi yishyuwe na Hakuzimana Jean Bosco, ariko ubugure bukagumaho kuko yaguze mu buryo bukurikije amategeko, yeretswe ibyangombwa bigaragaza ko Munyaneza Fabien ari nyirayo ijana ku ijana, akaba yaramaze gukorerwa ihererekanya mutungo, afite ibyangombwa byayo.

[26] Avuga ko mu gihe Urukiko rw'Ubujurire rwari rubibonye ukundi, rwari gutegeka Munyaneza Fabien na Ntakirutinka Béatrice kumusubiza agaciro imitungo ifite ubu, aho kuvuga ko ntacyo yagenerwa ngo kubera ko nta kirego cyayo yatanze ku rwego rwa mbere.

[27] Asobanura kandi ko nubwo Hakuzimana Jean Bosco ariwe wagobokeshejwe mu rubanza mu rwego rwa mbere, mu by'ukuri umutungo uburanwa waguzwe na Kabera Fidèle, ari nayo mpamvu amafaranga y'ubugure yavuye kuri konti ye ajya kuri konti ya Munyaneza Fabien, ariko kubera ko Kabera Fidèle aba muri Canada, Hakuzimana Jean Bosco wari mu gihugu aba ari we wandikwa ku masezerano y'ubugure mu mwanya we kugira ngo ihererekanya ry'ubutaka rizashoboke, ko rero Kabera Fidèle, ari we ukwiye kugumana imitungo yaguze cyangwa agasubizwa agaciro ifite ubu kuko yamaze kuyihererekanya na Hakuzimana Jean Bosco, akaba yarahawe ibyangombwa by'ubutaka bigaragaza ko imwanditseho.

[28] Me Habimana Donat akomeza avuga ko impamvu mu Rukiko Rwisumbuye batatanze amakuru nyayo ko umutungo uburanwa wamaze kwandikwa kuri Kabera Fidèle ngo abe ari we ugobokeshwa, ari uko uyu yaje mu Rwanda azanywe no kugira ngo bakore ihererekanya ry'ubutaka, ku buryo barangije icyo gikorwa agahita asubira muri Canada, ndetse ko Hakuzimana Jean Bosco yari yaramaze kugobokeshwa, bumvikana ko akomeza urubanza, cyane ko bumvaga uruhare Ntakirutinka Béatrice yasabaga ku mitungo avuga ko afitanye na Munyaneza Fabien atari Kabera Fidèle cyangwa Hakuzimana Jean Bosco wari kurumuha kuko uyu yakomezaga kwereka urukiko ko yaguze ubutaka buburanwa mu buryo bwubahirije amategeko, bwandiste kuri Munyaneza Fabien ijana ku ijana.

[29] Ku bijyanye n'uburyo ubutaka bubaruye kuri UPI 4/03/08/04/723, UPI 4/03/08/04/6286 na UPI 4/03/08/04/6287 bwanditswe kuri Hakuzimana Jean Bosco kandi mu masezerano yakorewe imbere ya noteri ku itariki ya 11/04/2017, havugwamo gusa ko aguze na Munyaneza Fabien ikibanza gifite UPI 4/03/08/04/722 ku giciro cya 22.000.000 Frw, avuga ko nk'uko amasezerano yo ku wa 04/05/2016 abigaragaza, baguze ubutaka bubaruwe (UPI 722) n'ubundi butari bubaruye bwarimo amazu atatu, bakora ihererekanya ry'ubutaka bwari bubaruye, naho ku bijyanye n'ubutari bubaruye, Hakuzimana Jean Bosco akoresha fiche cadastrale nshya, yifashishije inyandiko Munyaneza Fabien yaguriyeho.

[30] Avuga kandi ko ubwo butaka butari bubaruwe yabubarujemo ibice bitatu (3), kuko harimo inzu eshatu, buri nzu bayibarura mu kibanza cyayo, ariko bahera kuri nomero 723, yari isanzwe mu nyandiko y'amakuru ariko itanditse ku cyangombwa, bamuha nizo nomero zindi 6286 na 6287.

[31] Me Kavuyekure Dieudonné avuga ko Munyaneza Fabien yunganira yagurishije imitungo iburanwa hashingiwe ku burenganzira bwo kwigurishiriza yari yahawe na Agaseke Bank (ubu yabaye Bank of Africa) banki yari iyifiteho ingwate (créancier hypothécaire), agira ngo yishyure umwenda wa 16.128.194 Frw yari ayibereyemo, Hakuzimana Jean Bosco yishyura 22.000.000 Frw, hakoreshejwe transfert y'amafaranga yavanwe kuri konti ya Kabera Fidèle iri muri I&M Bank nk'uko bigaragazwa na transfert y'amafaranga yakozwe ku munsi baguriyeho.

[32] Avuga kandi ko mu gihe Urukiko rw'Ubujurire rwari rwemeje ko Ntakirutinka Béatrice afite uruhare ku mutungo wagurishijwe, rwari kubagabanya ½ cy'ikiguzi cy'umutungo yagurishije, hakuwemo 16.128.194 Frw yishyuwe Agaseke Bank kuko ari umwenda yafashe kugira ngo izo nyubako zibeho, ni ukuvuga ko bari kugabana 5.810.000Frw (22.000.000 Frw – 16.128.194 Frw), aho kugira ngo umutungo unyagwe benewo, dore ko na Hakuzimana Jean Bosco nawe atakiwufite kuko yamaze kuwugurisha Kabera Fidèle, ubu akaba ariwe uwanditsweho.

[33] Munyaneza Fabien nawe asobanura ko yagurishije ibibanza 2, harimo n'ikitabaruye cyarimo amazu atatu afatanye, ari nacyo kiburanwa kuri uru rwego, ko Hakuzimana Jean Bosco ariwe wafashe umwanzuro wo kukigabanyamo ibibanza 3 no kubishakira UPI.

[34] Me Nzirabatinyi Fidèle avuga ko imiburanire ya Kabera Fidèle ahagarariye ntaho inyuranya n'iya Hakuzimana Jean Bosco, agasobanura ko mu mwaka wa 2016 Kabera Fidèle yahaye umuvandimwe we Hakuzimana Jean Bosco uburenganzira bwo kumugurira umutungo mu Rwanda no kuwongerera agaciro, abumuha mu cyizere cy'abavandimwe nta nyandiko mpeshabubasha amuhaye (procuration), kandi akanamufasha gutunganya ibikenewe byose mu buyobozi kuko we atari hafi, atuye mu gihugu cya Canada, ko ari muri urwo rwego Hakuzimana Jean Bosco na Munyaneza Fabien bagiranye amasezerano y'ubugure bw'imitungo ivugwa muri uru rubanza, ari nayo mpamvu amafaranga y'ubugure yavuye kuri konti ye iri muri I&M Bank. Avuga ko Hakuzimana Jean Bosco amaze kubaruza igice cy'aho yaguze kitari cyanditse yahererekanyije uwo mutungo na Kabera Fidèle nk'uko bari barabisezeranye.

[35] Akomeza avuga ko kuba Ntakirutinka Béatrice yararegeye uruhare rwe ku mutungo avuga ko yari afatanyije na Munyaneza Fabien bitagombaga kugira ingaruka ku masezerano y'ubugure yabaye hagati ya Munyaneza Fabien na Hakuzimana Jean Bosco, ahubwo ko bagombaga kugabana ikiguzi. Icyakora ko mu gihe Urukiko rw'Ikirenga rwabibona ukundi, Kabera Fidèle yasubizwa ikiguzi yatanze n'inyongeragaciro yashyize ku mutungo kuko nyuma y'ubugure yagiye atanga andi mafaranga yazamuye agaciro k'umutungo uburanwa, kava kuri 22.000.000 Frw kagera kuri 70.000.000 Frw nk'uko bigaragara muri dosiye y'urubanza.

[36] Me Uwamahoro Nyiranzayino Christine uhagarariye Ntakirutinka Béatrice avuga ko nta kigaragaza ko Munyaneza Fabien yagurishije imitungo iburanwa kugira ngo yishyure umwenda yafashe mu Agaseke Bank kuko inyandiko yatanze zigaragaza ko umwenda wa 8.000.000 Frw yafashe ku wa 06/02/2014 wagombaga kuba warangije kwishyurwa ku wa 06/05/2014, ko ku wa 22/10/2014, nyuma y'amezi 4 gusa, yandikiwe abwirwa ko atagomba kurenza iminsi 30 atarishyura uwo mwenda wari umaze kungana na 19.820.715 Frw, bikaba bitumvikana ko yaba yarishyuriwe uwo mwenda ku wa 04/05/2016, ni ukuvuga nyuma y'amezi arenga 18, nta zindi nyungu zisanzwe n'iz'ubukererwe abariwe.

[37] Avuga kandi ko mu gihe haba habayeho gusubiza Hakuzimana Jean Bosco, icyasubizwa cyose cyasubizwa na Munyaneza Fabien kuko amafaranga yayahawe wenyine, hakaba nta n'ikigaragaza ko yishyuraga umwenda wa banki nk'uko abivuga.

UKO URUKIKO RUBIBONA:

[38] Urukiko rw'Ubujurire rwemeje ku rwego rwa nyuma ko Munyaneza Fabien yagurishije imitungo ibaruye kuri UPI 4/03/08/04/723, UPI 4/03/08/04/6286 na UPI 4/03/08/04/6287 atabyumvikanyeho na Ntakirutinka Béatrice kandi bayifiteho uburenganzira bungana. Iki cyemezo ni cyo kigomba guherwaho hasuzumwa niba Kabera Fidèle wahererekanyije iyo mitungo na Hakuzimana Jean Bosco wayiguze na Munyaneza Fabien yayigumana kuko yayiguze mu buryo bukurikije amategeko cyangwa agasubizwa agaciro kayo.

[39] Naho ikibazo cyo kumenya niba mu gihe Urukiko rw'Ubujurire rwari rwemeje ko Ntakirutinka Béatrice afite uruhare ku mitungo yagurishijwe, rwaragombaga gutegeka ko agabana na Munyaneza Fabien ½ cy'ikiguzi cy'imitungo yagurishije, hakuwemo amafaranga avuga ko yishyuye Agaseke Bank, bakagabana asigaye, ariko imitungo ikaguma mu maboko y'uwaguze, Urukiko rurasanga kitasuzumwa kuri uru rwego kuko nta kirego cy'akarengane Munyaneza Fabien yatanze, muri uru rubanza hakaba hasuzumwa gusa akarengane kazanywe na Hakuzimana Jean Bosco.

[40] Ibyerekeranye n'ingaruka zo kugurisha umutungo uhuriweho, abawufiteho uburenganzira bose batabyumvikanyeho, uru rukiko rwabifasheho umurongo mu rubanza Gahire Athanase yaburanaga na Bagenzi Théogène n'abandi[4], aho rwasobanuye, rwifashishije imanza zaciwe mu bindi bihugu n'inyandiko z'abahanga mu mategeko, ko igurisha ry'umutungo uhuriweho rikozwe n'umwe mu bawusangiye, riba rifite agaciro ku baguze ku bireba gusa igipande kigize umugabane w'uwagurishije.

[41] Ibivuzwe mu gika kibanza byagarutsweho mu rubanza Twagirayezu Alice na bagenzi be baburanye na Twagirayezu Albert na Umumaranyota Agnès[5], aho uru Rukiko, nyuma yo kubona ko umutungo waburanwaga wagurishijwe abavandimwe basangiye uburenganzira kuri uwo mutungo batabyumvikanyeho, rwategetse uwaguze ko asubiza abagurishirijwe batabyemeye uruhare rwabo kuri uwo mutungo rukabandikwaho, uwaguze akagumana gusa uruhare rw'uwamugurishije, ndetse icyangombwa cy'umutungo uwaguze yari yarabonye kigateshwa agaciro, akandikwaho gusa uruhare rw' uwamugurishije.

[42] Byagarutsweho nanone mu rubanza Umulinga Consilde yaburanye na Ngirinshuti Michel n'abandi[6], aho Urukiko rwemeje ko abaguze imitungo itimukanwa n'utari nyirayo bagomba kuyisubiza nyirayo ariko uwabagurishije iyo mitungo akabasubiza agaciro kayo. Ibi kandi Urukiko rwabyemeje rumaze kugaragaza ko abaguze baguze bazi ko uwabagurishije ari nyir'imutungo, kuko yari yaberetse ibyangombwa byatanzwe n'inzego zibifitiye ububasha.

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[4] Urubanza Nº RS/INJUST/RC 0008/2019/SC rwaciwe ku wa 12/11/2021, ibika bya 83-84
[5] Urubanza Nº ° RS/INJUST/RC 00007/2020/SC rwaciwe ku wa 10/12/2021, ibika bya 46-47.
[6] Urubanza Nº RS/INJUST/RC 00001/2021/SC rwaciwe ku wa 17/12/2021, ibika bya 50-52.

[43] Ibimaze kuvugwa byumvikanisha ko nubwo Hakuzimana Jean Bosco nawe yaba yaraguze umutungo uburanwa azi ko uwo baguze ari nyirawo kuko yeretswe amasezerano yaguriyeho uwo mutungo, nyuma y'ubwo bugure akaba yarabonye ibyangombwa by'ubutaka bitangwa n'inzego zibifitiye ububasha, ataribyo biha Kabera Fidèle, baherereKanyije uwo mutungo, uburenganzira bwo kuwugumana kuko ibyangombwa by'umutungo bishobora guteshwa agaciro iyo hari ugaragaje ko ari we nyirawo nk'uko nabyo byasobanuwe mu rubanza Nicyabera Espérence yaburanye na Mukagatare Mariane[7].

[44] Hashingiwe ku bisobanuro byatanzwe mu bika bibanza, Urukiko rurasanga amasezerano Munyaneza Fabien yakoranye na Hakuzimana Jean Bosco afite agaciro ku bireba umugabane wa Munyaneza Fabien ku mitungo iburanwa, ariko ntako afite ku bireba umugabane wa Ntakirutinka Béatrice. Ibi bivuze ko uyitunze ubu ariwe Kabera Fidèle agomba gusubiza gusa uruhare rwa Ntakirutinka Béatrice rugizwe n'umutungo ubaruye kuri UPI 4/03/08/04/723, akagumana uruhare rwa Munyaneza Fabien rugizwe n'umutungo ubaruye kuri UPI 4/03/08/04/6286 n'umutungo ubaruye kuri UPI 4/03/08/04/6287. Ibi byumvikanisha kandi ko icyangombwa cy'umutungo ubaruye kuri UPI 4/03/08/04/723 cyanditswe kuri Kabera Fidèle kigomba guteshwa agaciro, uwo mutungo ukandikwa kuri Ntakirutinka Béatrice.

[45] Ku bijyanye no kumenya niba hari amafaranga Kabera Fidèle yasubizwa ajyanye n'umutungo wasubijwe Ntakirutinka Béatrice n'uwayamusubiza, Urukiko rurasanga Munyaneza Fabien wagurishije umutungo afatanyije n'undi batabyumvikanyeho, ariwe ugomba kwirengera ingaruka zabyo, akamusubiza agaciro k'uwo mutungo kangana na 17.109.000 Frw nk'uko kagaragajwe mu igenagaciro ry'imitungo iburanwa ryategetswe n'Urukiko Rukuru, Urugereko rwa Musanze.

C. Ibyerekeranye n'indishyi zisabwa Indishyi zisabwa na Hakuzimana Jean Bosco

[46] Me Habimana Donat asaba ko Hakuzimana Jean Bosco ahagarariye yagenerwa 2.500.000 Frw y'igihembo cya Avoka kuri uru rwego n'indishyi yari yasabye mu nkiko zabanje ntazigenerwe, izo ndishyi zikishyurwa na Ntakirutinka Béatrice na Munyaneza Fabien kubera ko bananiwe kumvikana ngo bakemure ikibazo bafitanye ngo bareke gukomeza kurushya Hakuzimana Jean Bosco wabatabaye abishyurira ideni rya banki.

[47] Me Kavuyekure Dieudonné wunganira Munyaneza Fabien avuga ko indishyi Hakuzimana Jean Bosco asaba akwiye kuzihabwa, ariko ko zakwishyurwa na Ntakirutinka Béatrice kuko ariwe nyirabayazana w'uru rubanza.

[48] Me Uwamahoro Nyiranzayino Christine avuga ko Ntakirutinka Béatrice, ahagarariye ntacyo akwiriye kuryozwa muri uru rubanza ku birebana na Hakuzimana Jean Bosco kuko ntaho ahuriye nawe, ko ibyo yabaza byose byaryozwa Munyaneza Fabien wamugurishije imitungo bafatanyije.

UKO URUKIKO RUBIBONA:

[7] Urubanza Nº RS/INJUST/RC 00004/2018/SC rwaciwe ku wa 21/02/2020, ibika bya 22,24 na 43.

[49] Ku bijyanye n’indishyi Hakuzimana Jean Bosco yasabye mu nkiko zabanjye, Urukiko rurasanga muri izo manza nta ndishyi yasabaga Munyaneza Fabien, ahubwo yarazisabaga Ntakirutinka Béatrice wenyine, zikaba rero nta shingiro zifite kuko uwo yazisabaga ntacyo yamwangirije.

[50] Ku bijyanye n’amafaranga y‘igihembo cya Avoka kuri uru rwego, Urukiko rurasanga Hakuzimana Jean Bosco akwiye kugira ayo agenerwa kuko byabaye ngombwa ko afata Avoka wo kumuburanira, akaba afite ibyo atsindiye muri uru rubanza, ariko akishyurwa na Munyaneza Fabien wenyine kuko ari we wamugurishije umutungo ahuriyeho na Ntakirutinka Béatrice batabyumvikanyeho. Urukiko rurasanga kandi amafaranga asaba ari menshi kandi atayatangira ibimenyetso, bityo mu bushishozi bwarwo akaba agenewe 500.000 Frw.

Indishyi zisabwa na Ntakirutinka Béatrice

[51] Me Uwamahoro Nyiranzayino Christine asaba ko Hakuzimana Jean Bosco na Munyaneza Fabien bategekwa guha Ntakirutinka Béatrice 10.000.000 Frw y’indishyi z’akababaro, 2.000.000 Frw y’igihembo cya Avoka na 3.000.000 Frw y’ikurikiranarubanza.

[52] Me Habimana Donat avuga ko nta ndishyi Hakuzimana Jean Bosco akwiye gutanga kuko nta kosa yakoze, naho Me Kavuyekure Dieudonné akavuga ko nta ndishyi Munyaneza Fabien akwiriye kuryozwa kubera ko Ntakirutinka Béatrice ariwe wabaye nyirabayazana w’uru rubanza.

UKO URUKIKO RUBIBONA:

[53] Urukiko rurasanga Ntakirutinka Béatrice akwiye kugenerwa amafaranga y’igihembo cya Avoka n’ikurikiranarubanza, ariko akishyurwa na Munyaneza Fabien wenyine kuko ariwe wabaye nyirabayazana w’uru rubanza, akagenerwa 500.000 Frw y’igihembo cya Avoka na 300.000 Frw y’ikurikiranarubanza kuko ari mu rugero, ayo asaba akaba atayatangira ibimenyetso. Ku birebana n’indishyi z’akababaro Ntakirutinka Béatrice asaba, Urukiko rurasanga ntazo yagenerwa kuko adasobanura ishingiro ryazo.

Indishyi zisabwa na Munyaneza Fabien

[54] Me Kavuyekure Dieudonné asaba ko Ntakirutinka Béatrice yategekwa guha Munyaneza Fabien 2.500.000 Frw y’igihembo cya Avoka kuri uru rwego, naho Me Uwamahoro Nyiranzayino Christine akavuga ko Ntakirutinka Béatrice ntacyo akwiriye kuryozwa kuko atari we nyirabayazana w’uru rubanza.

UKO URUKIKO RUBIBONA:

[55] Urukiko rurasanga amafaranga y’igihembo cya Avoka Munyaneza Fabien asaba atayakwiye kuko ntacyo atsindiye muri uru rubanza, akaba ari nawe watumye haba imanza hagati ye na Ntakirutinka Béatrice zagize ingaruka kuri Hakuzimana Jean Bosco, bigatuma agobokeshwa mu rubanza, ndetse agomba gutanga ikirego cy’akarengane kugira ngo arengere inyungu ze.

III. ICYEMEZO CY'URUKIKO:

[56] Rwemeje ko ikirego cyatanzwe na Hakuzimana Jean Bosco, asaba gusubirishamo ku mpamvu z'akarengane urubanza Nº RCAA 00017/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/06/2021, gifite ishingiro kuri bimwe;

[57] Rwemeje ko Kabera Fidèle wahererekanyije na Hakuzimana Jean Bosco imitungo ibaruye kuri UPI 4/03/08/04/722, UPI 4/03/08/04/6286 na UPI 4/03/08/04/6287 ayigumana;

[58] Rwemeje ko Ntakirutinka Béatrice agumana umutungo ubaruye kuri UPI 4/03/08/04/723, Munyaneza Fabien akamwongerera 8.060.250 Frw nk'uko byategetswe n'Urukiko rw'Ubujurire;

[59] Rwemeje ko icyangombwa cy'ubutaka gifite UPI 4/03/08/04/723 cyanditse kuri Kabera Fidèle giteshejwe agaciro, ubwo butaka bukaba bugomba kwandikwa kuri Ntakirutinka Béatrice;

[60] Rutegetse Munyaneza Fabien gusubiza Kabera Fidèle agaciro umutungo ubaruye kuri UPI 4/03/08/04/723 ufite ubu gahwanye na 17.109.000Frw;

[61] Rutegetse Munyaneza Fabien guha Hakuzimana Jean Bosco 500.000 Frw y'igihembo cya Avoka kuri uru rwego;

[62] Rutegetse Munyaneza Fabien guha Ntakirutinka Béatrice 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza kuri uru rwego, ayo mafaranga akaba yiyongera kuyategetswe n'Urukiko Rukuru, Urugereko rwa Musanze, uko yakosowe n'Urukiko rw'Ubujurire, angana na 1.150.000 Frw.