

RWANDA / JUDGMENT

Batamuriza v Twagiramariya n'abandi

RCA 00271/2018/HC/KIG

COURT

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Text

Page 1

ama BATAMULIZA vs TWAGIRAMARIYA n'abandi [Rwanda URUKIKO RUKURU-RCA 00271/2018/HC/KIG (Uwamariya P.J.) 17 nyakanga 2020] Amategeko agenga imikorere y'abavoka – guhagararira abantu mu manza – Umwavoka afite ububasha bwo kuburana imbere y'Inkiko atagombye kwerekana ko hari uwamutumye – Itegeko N° 83/2013 ryo kuwa 11/09/2013 rishyiraho urugaga rw'abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo, ingingo ya 47 Amategeko agenga amasezerano – ubushobozi bwo gukora amasezerano – kwakwa ubushobozi birangirana n'uko impamvu zabiteye nazo zivuyeho, nyamara kubivana ku muntu byemezwa hakurikijwe imihango imwe n'ikurikizwa igihe cyo kwakwa ubushobozi, Itegeko ryo kuwa 27 ukwakira 1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, Ingingo ya ya 451 Incamake y'Ikibazo: Uru rubanza rwatangiye Batamuriza arega Twagiramariya mu Rukiko Rwisumbuye rwa Nyarugenge asaba Urukiko kumutegeka kumukorera ihererekanya ry'uburenganzira ku nzu baguze (mutation) iri mu kibanza n°144 kiri mu Gatenga, mu Karere ka Kicukiro bityo ikamwandikwaho cyangwa agahabwa agaciro igezeho igihe yatangaga ikirego. Bakaba barayiguze ahagarariye se Nkundabatware kuko ubwo bubasha yari yarabuhawe n'Urukiko ubwo yarabwamburwaga (mise sous conseil judiciaire). Avuga ko

gutanga ikirego yabitewe nuko yasabye Umurenge wa Gatenga kwandiwaho uwo mutungo, bamusaba kuzana abazungura ba Nkundabatware bose bagasinya kuko uyu yitabye Imana, nyamara usibye Twagiramariya wagurishije, abandi ntibemera gusinya. Twagiramariya yaburanye avuga ko se Nkundabatware yagize ikibazo cyo guhungabana bituma urukiko rushyiraho undi muntu wo mu muryango wo kumucungira, aba ariwe ushyirwaho, Yavuze ko ibyo Batamuriza asaba yabihabwa kubera ko inzu yagurishijwe abavandimwe be bose babizi, amafaranga yavuyemo agakemura ibibazo by'umuryango. Abavandimwe ba Twagiramariya baburanye bavuga ko kuba Batamuriza yaragiranye amasezerano na Twagiramariya ko bikorwa batari babizi, ko n'ayo masezerano batayazi kuko batigeze bayamenyeshwa mu buryo bwemewe n'amategeko kandi akaba ari nta n'umwe muri bo wigeze ayasinyaho. Bavuga ko nta burenganzira Twagiramariya yari afite bwo guhagararira se, akaba ari nta n'uburenganzira abavandimwe be bamuhaye, ko na se akiriho ubwo bugure atigeze abwemera, n'abayobozi bakaba bataremeye ibyo Twagiramariya yakoze. Ku by'agaciro kongerewe ku nzu bavuga ko Batamuriza yabyirengera kuko ari we wakoze amakosa. Urukiko rwaciye urubanza rwemeza ko ikirego cyatanze na Batamuriza kidafitige ishingiro, rwemeza ko icyiswe amasezerano y'ubugure bw'inzu hagati ya Batamuriza na Twagiramariya atigeze agira agaciro, rwemeza ko inzu ivugwa iguma ari iy'abazungura ba Nkundabatware. Batamuriza ntiyishimiye imikirize y'urubanza arujurira mu Rukiko Rukuru, avuga ko abagobotse bose batari bahagarariwe mu rubanza rujuririrwa. Asobanura kandi ko impamvu yajuriye aruko urukiko rwemeje ko yaguze mu buriganya kandi atariko bimeze. Avuga ko iyi nzu yayigurishijwe na Twagiramariya abavandimwe bose babizi kuko n'amafaranga yayanyujije kuri compte y'umwe mu bavandimwe be, amasezerano ye aba bazungura bakaba bagomba kuyemera nkuko bemeye ay'abandi bagurishije kandi nabo batarasinyiwe n'abavandimwe bose.

Page 2

Uwanyirigira n'abandi bavandimwe be usibye Twagiramariya bavuga ko ayo masezerano yakozwe mu buriganya kuko ari nta muvandimwe n'umwe wayasinyeho, ise akiriho nawe akaba yarayaregeye mu rukiko asaba ko aseswa nubwo yapfuye urubanza rutaracibwa. Uwanyirigira avuga ko nubwo amafaranga y'ikiguzi cy'iyi nzu yanyujijwe kuri compte ye atigeze ayakoresha. Urukiko rwemeje ko rwemeje ko abagobotse bose bari bahagarariwe, rwemeza kandi ko amasezerano yakozwe hagati ya Batamuriza agumanye agaciro kayo bityo ko inzu yaguze igomba kumwandikwaho. Incamake y'icyemezo: 1. Umwavoka afite ububasha bwo kuburana imbere y'Inkiko atagombye kwerekana ko hari uwamutumye, kuba avoka avuga ko ahagarariye ababuranyi mu rubanza hanyuma bo ntibabihakane ntawe ukwiye kuvuga ko badahagarariwe ahubwo baba bahagarariwe mu buryo bwemewe n'amategeko, ndetse n'urubanza rwacibwa rukabagiraho ingaruka nk'ababuranyi.

2. kwakwa ubushobozi birangirana n'uko impamvu zabiteye nazo zivuyeho, nyamara kubivana ku muntu byemezwa hakurikijwe imihango imwe n'ikurikizwa igihe cyo kwakwa ubushobozi, kandi uwatswe ubushobozi ntashobora gusubirana uburenganzira bwe mbere y'urubanza rubivanaho. Uwatswe ubushobozi nta gikorwa yemerewe gukora kuko afatwa nk'umwana muto. Ubujurire bufite ishingiro. Amasezerano y'ubugure agumanye agaciro

kayo Amategeko yakoreshejwe: Itegeko N° 83/2013 ryo kuwa 11/09/2013 rishyiraho urugaga rw'abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo, ingingo ya 47. Itegeko ryo kuwa 27 ukwakira 1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, Ingingo ya ya 451, 448 Itegeko N° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 108 Amabwiriza No 01/2014 agenga ibihembo mbonera by'abavoka Nta manza zifashishijwe Inyandiko z'abahanga zifashishijwe. https://fr.wikipedia.org/wiki/Urubanza_I._IMITERERE_Y'URUBANZA.

Page 3

- [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge Batamuriza Marie Francine asaba urukiko gutegeka ko yandikwaho inzu yaguze na Twagiramariya Chantal iri mu kibanza n°144 kiri mu Gatenga, mu Karere ka Kicukiro. Umuhagarariye yasobanuye ko kuwa 29/09/2010 yaguze inzu na Twagiramariya Chantal wari warahawe n'Urukiko ububasha bwo guhagararira se Nkundabatware Venant (mise sous conseil judiciaire) mu rubanza RC 0214/06/TGI/Nyge rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge kuwa 28/11/2006, bayigura 14.000.000 frw, yishyura 10.000.000frw, bumvikana ko andi 4.000.000Frw azayishyura bamukoreye mutation. [2] Yavuze ko Nkundabatware Venant se wa Twagiramariya Chantal akiriho, yasabye ko ubwo bugure buseswa ngo kuko uwo mwana yagurishije umutungo w'umubyeyi we nta burenganzira. Urubanza rwanditswe kuri RC892/12/TGI/NYGE ruza gusibwa kuwa 20/03/2013 kubera kutitaba kwe, ararubyutsa rwandikwa kuri RC0252/13/TGI/NYGE, ariko aza gupfa rutararangira, hahamagajwe abazungura be ngo barukomeze, ntibitaba na bwo rurasibwa, icyo gihe amasezerano yasabirwaga guseswa aba agumanye agaciro kayo akaba yaragombaga kubahirizwa uko ateye. [3] Yavuze ko nyuma yaho Batamuriza yasabye Umurenge wa Gatenga kwandikwaho uwo mutungo, bamusaba kuzana abazungura ba Nkundabatware bose bagasinya, nyamara usibye Twagiramariya wagurishije, abandi ntibemera gusinya, bituma yiyambaza urukiko ngo rutegeke ko uwo mutungo yaguze umwandikwaho (mutation), bitaba ibyo bakamwishyura agaciro kawo kageze kuri 116.400.000frw kuko amaze kugura iyo nzu yayivuguruye, agahabwa kandi n'indishyi z'akababaro kubera kumurushya. [4] Twagiramariya Chantal yaburanye avuga ko nyuma y'intambara se Nkundabatware yagize ikibazo cyo guhungabana bituma urukiko rushyiraho undi muntu wo mu muryango wo kumucungira, aba ariwe ushyirwaho, ari na we wakurikiranaga izo manza Nkundabatware yaregwaga zijyanye n'imyenda ya Banki. Yavuze ko ibyo Batamuriza asaba yabihabwa kubera ko inzu yagurishijwe abavandimwe be bose babizi, amafaranga yavuyemo agakemura ibibazo by'umuryango, Uwanyirigira akaba yarasabye ko amafaranga ashwirwa kuri compte ye, kandi akaba ari na ko byagenze, akayakoresha mu bintu bye bitandukanye harimo ubukwe bwe, andi yasigaye akoreshwa hishyurwa expert mu rubanza baregaga se Nkundabatware Venant, hakaba n'andi yakoreshejwe mu gufasha abavandimwe babo bari mu mahanga mu bibazo bitandukanye. Yavuze ko Uwanyirigira yari asanzwe azi ko uwo mutungo wagurishijwe kuko nyuma y'urupfu rwa se ariwe wagizwe umukuru w'umuryango,

hakaba hari andi mazu yagurishijwe kandi abavandimwe bose badasinye ariko abo bagurishije bakaba barabakoreye mutation, bityo ibyo uvuga ko atazi ayo masezerano bikaba atari iby'ukuri. [5] Abaregwa kimwe n'abagobokeshejwe mu rubanza baburanye bavuga ko kuba Batamuriza yaragiranye amasezerano na Twagiramariya ngo bagashyira mu masezerano ko amafaranga azanyuzwa kuri konti ya Uwanyirigira, ko bikorwa batari babizi, ko n'ayo masezerano batayazi kuko batigeze bayamenyeshwa mu buryo bwemewe n'amategeko kandi akaba ari nta n'umwe muri bo wigeze ayasinyaho. Bavuga ko nta burenganzira Twagiramariya yari afite bwo guhagararira se, akaba ari nta n'uburenganzira abavandimwe be bamuhaye, kandi ko kuba urubanza rwarasibwe bitamuhesha ubwo burenganzira kuko na se akiriho ubwo bugure atigeze abwemera, n'abayobozi bakaba bataremeye ibyo Twagiramariya yakozwe.

Page 4

- [6] Ku by'agaciro kongerewe ku nzu bavuga ko Batamuriza yabyirengera kuko ari we wakoze amakosa, kandi akaba agomba kwishyura ubukode bungana na 400 000frw ya buri kwezi yayikuyemo kuva yagura kugeza ubu. [7] Urukiko rwaciye urubanza rwemeza ko ikirego cyatanze na Batamuriza Marie Francine kidafitige ishingiro, rwemeza ko icyiswe amasezerano y'ubugure bw'inzu hagati ya Batamuriza Marie Francine na Twagiramariya Chantal atigeze agira agaciro, rwemeza ko inzu ivugwa iguma ari iy'abazungura ba Nkundabatware Vénant, rwemeza ko indishyi Batamuriza yaregeye zidafitige ishingiro, ahubwo rumutegeka guha indishyi Uwanyirigira Télesphore, Dusabimana Onesphore, Bizimana Anastase, Ishimwe Eric, Manirarora Janvier, Mbabazi Gloria, Ngabiwenimana Christophe na Nkundimana Christian, zingana na 600.000frw, runategeka ko ingwate y'amagarama 50.000 frw Batamuriza yatanze arega amuhareraho. [8] Batamuriza Marie Francine ntiyishimiye imikirize y'urubanza arujurira mu Rukiko Rukuru. Yabanje kuvuga ko abagobotse bose batari bahagarariwe. Asobanura kandi ko impamvu yajuriye aruko urukiko rwemeje ko yaguze mu buriganya kandi atariko bimeze. Avuga ko iyi nzu yayigurishijwe na Twagiramariya Chantal abavandimwe bose babizi kuko n'amafaranga yayanyujije kuri compte y'umwe mu bavandimwe be, amasezerano ye aba bazungura bakaba bagomba kuyemera nkuko bemeye ay'abandi bagurishije kandi nabo batarasinyiwe n'abavandimwe bose. Avuga ko urukiko rubibonye ukundi rukemeza ko ayo masezerano ateshwa agaciro yasubizwa agaciro k'ibyo yongereye kuri iyi nzu. [9] Twagiramariya Chantal avuga ko amasezerano yagiranye na Batamuriza Marie Francine atagomba guseswa kuko yagurishije iyi nzu abyumvikanyeho n'abavandimwe be kubera ibibazo umuryango wabo wari ufite, kandi amafaranga yahawe akaba yarayakoresheje mu nyungu z'umuryango harimo n'ubukwe bw'Uwanyirigira Télesphore, bakaba bagomba kureka Batamuriza akayandikwaho, bitaba ibyo akishyurwa agaciro k'inyongera kashyizwe kuri iyo nzu kuko n'ubwishyu mu mitungo ya se buhari. [10] Uwanyirigira Télesphore n'abandi bavandimwe bavuga ko ayo masezerano yakozwe mu buriganya kuko ari nta muvandimwe n'umwe wayasinyeho, ise akiriho akaba yarayaregeye mu rukiko asaba ko aseswa nubwo yapfuye urubanza rutaracibwa. Uwanyirigira avuga ko nubwo amafaranga y'ikiguzi cy'iyi nzu

yanyujijwe kuri compte ye atigeze ayakoresha, ko ahubwo yayahaye Twagiramariya Chantal, ko n'ibindi ariwe wabibazwa. [11] Ku kuba Batamuriza Marie Francine yasubizwa agaciro k'inyongera kuri iyi nzu bavuga ko atagasubizwa, ko kahingana n'ubukode bw'igihe cyose ayimazemo yakira 400.000frw y'ubukode bwayo buri kwezi. Avuga kandi ko abavandimwe bose bahagarariwe, ko urubanza ruzacibwa ruzabagiraho ingaruka nk'ababuranyi. icyo urukiko rugomba gusuzuma muri uru rubanza, nukumenya niba abagobokeshejwe barahagarariwe mu buryo bwubahirije amategeko, kumenya niba Batamuriza yaraguze mu buriganya ku buryo amasezerano ye atagira agaciro, no gusuzuma indishyi z'ikurikiranarubanza n'igihembo cy'avoka zisabwa kuri uru rwego rw'ubujurire. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba abagobokeshejwe barahagarariwe mu buryo bwubahirije amategeko

Page 5

- [12] Uhagarariye Batamuriza avuga ko mu rubanza rujuririrwa hagobokeshejwe abantu batandatu (6), ariko abahagarariwe mu rubanza akaba ari Ishimwe Eric na Ngabiwenimana Christophe bonyine. Ibisobanuro Urukiko rwatanze kuri iki kibazo avuga ko atari byo kuko mu gihe hari abanditse e-mail bamenyesha Urukiko ko bazahagararirwa na Me Nsabiyumva aribo bonyine yahagarariye. Ibivugwa ko ngo banditse ko bose bazahagararirwa n'uwo Avoka avuga ko bitahabwa agaciro kuko buri wese yagobokeshejwe ku giti cye ntawe uhagarariye undi. Avuga ko nubwo Avoka atabazwa ubutumwa bw'uwo ahagarariye, basanga muri iyi dosiye ari ngombwa kuko bamwe bagaragaza ko batumye Me Nsabiyumva kubahagararira, ko rero mu gihe abandi bitagaragara ko bamutumye, bibaha uburenganzira bwo kuzatambamira urubanza. [13] Uwanyirigira avuga ko urega ari we wasabye ko abari bagobokeshejwe mu urubanza ku rwego rwa mbere bagobokeshwa, ndetse anasaba ko bagobokeshwa hakoreshejwe ikoranabuhanga, asaba urukiko ko rutegeka Uwanyirigira Telesphore kuzana e-mail zabo, arabikora bandikira urukiko bemeza ko Me Nsabiyumva Cyubahiro Jean Damascene abahagararira, birakorwa. Avuga ko ibyo bavuga ko kuba batumijwe byazaba impamvu yo kurutambambira bitahabwa ishingiro kuko baba batambamira urubanza urubanza batsinze. [14] Twagiramariya avuga ko nawe abona ko abagobokeshejwe batahagarariwe bose na Me Nsabiyumva nk'uko abivuga, kuko buri wese yagobokeshejwe ku giti cye ntawe uhagarariye undi, ariko Ishimwe Eric na Ngabiwenimana Christophe muri email zabo ziha Me Nsabiyumva ubutumwa bwo kubahagararira, bavugamo ko ngo ahagarariye abavandimwe bose nk'aho abandi bose babibatumye, akaba abona Bizimana Anastase, Manirarora Janvier, Mbabazi Gloria na Nkundimana Christian bo batarahagarariwe. UKO URUKIKO RUBIBONA [15] Ingingo ya 47 y'itegeko N° 83/2013 ryo kuwa 11/09/2013 rishyiraho urugaga rw'abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo, iteganya ko Abavoka bonyine aribo bafite uburenganzira bwo kuburanira imbere y'Inkiko, uretse ibyo amategeko ateganya ukundi. Umwavoka afite ububasha bwo kuburana imbere y'Inkiko atagombye kwerekana ko hari uwamutumye, keretse iyo itegeko risaba ubutumwa bwihariye. [16] Muri uru rubanza Batamuriza Marie Francine na Twagiramariya Chantal nta mpamvu iteganywa n'itegeko bagaragaza ituma Me

Nsabiyumva Cyubahiro yasabwa kubanza kugaragaza ubutumwa bwihariye yahawe na Bizimana Anastase, Manirarora Janvier, Mbabazi Gloria na Nkundimana Christian kugira ngo ababuranire. [17] Kuba rero Umwavoka afite ububasha bwo kuburana imbere y'Inkiko atagombye kwerekana ko hari uwamutumye, urukiko rurasanga kuba ku rwego rwa mbere ndetse no muri ubu bujuriye Me Nsabiyumva Cyubahiro ahagarariye Bizimana Anastase, Manirarora Janvier, Mbabazi Gloria na Nkundimana Christian kandi kugeza ubu muri bo akaba ari ntawe urahakana ko amuhagarariye, ibivugwa na Batamuriza na Twagiramariya nta shingiro bigomba guhabwa, aba bose bakaba bahagarariwe mu buryo bwemewe n'amategeko, urubanza ruzacibwa rukaba rugomba kuzabagiraho ingaruka nk'ababuranyi. Kumenya niba BATAMURIZA yaraguze mu buriganya ku buryo amasezerano ye atagira agaciro.

Page 6

- [18] Uburanira Batamuriza avuga ko mu gace ka 22 k'urubanza, Urukiko ruvuga ko ngo amasezerano ye atigeze agira agaciro, nyamara yaraguze n'umutima mwiza, yeretswe icyangombwa cy'umutungo na Twagiramariya amaze kubyumvikanaho n'abavandimwe be ku buryo n'igice cy'ubwishyu cyanyujijwe kuri konti y'umwe muri abo bavandimwe ari we Uwanyirigira Telesphore. Avuga ko uyu yaje kuba umukuru w'umuryango nyuma, akaba atarigeze agira icyo avuga kuri iyo nzu kuva 2010 kugeza Batamuriza ashatse kuyandikwaho, hakaba hakwibazwa icyatumaga atagira icyo ayivugaho mu gihe yemeza ko batigeze bayigurisha. [19] Avuga kandi ko abavandimwe 2 ba Twagiramariya Chantal banga guhinduriza Batamuriza ari bo Uwanyirigira Telesphore na Dusabimana Onesphore bagiye bagurisha indi mitungo n'abandi bantu nka Twahirwa Ephrem bamukorera mutation berekana ko ari bo bagize succession Nkundabatware, bakaba basanga kwanga guhinduriza Batamuriza ari akarengane bamukorera, urukiko rukaba rukwiye kubitegeka. [20] Avuga kandi ko kuba mu gika cya 25, Umucamanza yaravuze ko abazungura ba Nkundabatware ari bo bagomba kwemera ubugure atari byo kuko n'ubwo Nkundabatware yareze akaza gupfa urubanza rutararangira, abo bazungura baruhamagawemo nabo ntibitabe, bivuga ko ikibazo kiri muri iyi dosiye atari izungura, kuko ubugure bwabayeho nyir'ubwite akiriho, kandi kuva uwo mubyeyi yapfa akaba ari nta wigeze ashaka kugaruza uwo mutungo mu gihe bari kuba batekereza ko ari umutungo wabo wagurishijwe mu manyanga nk'uko ubu babivuga, ahubwo barindiriye ko Batamuriza aba ari we urega asaba kwandikwaho iyo nzu n'ikibanza yubatsemo. [21] Avuga ko kuba urukiko rubanza rwaravuze ko kuba Nkundabatware yari yaratangiye kuregera ayo masezerano agapfa urubanza rutaburanishijwe bituma ayo masezerano atagira agaciro bo basanga atari byo, kuko nyuma y'uko apfa hahamagajwe abamuzungura ngo barukomeze, ahubwo kuba bataritabye rukongera gusibwa ntibongere nibura ngo batange n'ikirego, basanga nabo bemera ubwo bugure. [22] Avuga ko basanga Urukiko rwari gushingira ku ngingo za 104 na 108 z'Itegeko N° 15/2004 ryo kuwa 12/06/2004 ry'ibimenyetso, rugacukumbura ruva ku masezerano ya Batamuriza na Twagiramariya, rugasuzuma uko ubwishyu bwatanzwe n'imyitwarire y'abavandimwe be nyuma y'urupfu rwa se, rugasuzuma uburyo abavandimwe batatu baba mu Rwanda bagiye bagurisha indi

mitungo kandi bagakorera mutation abo baguze, kandi baraguze mu buryo nk'ubwa Batamuriza, maze rukemeza ko ubugure bwe bufite agaciro. [23] Me Nsabiyumva Cyubahiro avuga ko Batamuriza Francine usaba ko urukiko rwakwemeza ko amasezerano ye afite agaciro, aterekana icyo ashingiraho. Avuga ko usomye ayo masezerano usanga avuga ko Chantal amugurishije inzu ye iri mu kibanza No 144, ya Nkundabatware, akongera akavuga ko kuba Dusabimana Onesphore utarashyize umukono kuri ayo masezerano, no kuba yaramaze igihe kirekire adakurikirana iyo nzu ngo bisobanuye ko ubwo bugure yari yabwemeye. Avuga ko iyi mvugo atari yo, kuko nta mpamvu yariho yo kujya yirirwa aregana na Batamuriza mu gihe Nkundabatware ubwe nyir'umutungo yirirwaga aregana na we ndetse na Chantal kandi agatsinda. Avuga ko amasezerano agira ingaruka ku bayasinye, ko atagira ingaruka ku batarayasinye, ko uwasinye ayo masezerano ariwe ugomba kubiryoza kuko yagurishije mu buryo bw'uburiganaya se akiriho abeshya ko yasaze kandi yari muzima, ikibigaragaza akaba aruko akiriho yamuregaga ubwe mu nkiko asaba ko ayo masezerano y'ubugure bw'izu ye yateshwa agaciro.

Page 7

[24] Avuga kandi ko ubugure bwagombaga kwemezwa na Nkundabatware ubwe akiriho akaba atarabwemeraga, igihe atakiriho bukaba bwakwemezwa cyangwa bugahakanwa n'abazungura be, bityo ibyo avuga bikaba ari nta shingiro bifite. [25] Avuga kandi ko yaba Dusabimana Onesphore, n'abandi baregwa bavuga ko kuba Nkundabatware yarapfuye ataburanye urubanza rwe, bidahindura ukuri amasezerano abujijwe n'amategeko, kuba igikorwa kimaze iminsi kandi batarakiregeye bikaba bidasobanuwe ko cyemewe. [26] Twagiramariya n'umwunganizi we bavuga ko amasezerano ya Batamuriza Francine afite agaco, ko nubwo ariwe wayasinyeho wenyine yari yabyumvikanyeho n'abavandimwe be, kandi akaba ari we wari mukuru abarera, akaba yarabikoze mu nyungu z'umuryango wari usigaranye ibibazo byinshi by'ubukene n'imanza. [27] Bavuga ko kuba uyu munsu Uwanyirigira agambana ku bandi bavandimwe ngo bahakane amasezerano kandi bayazi ari ugushaka guhuguza inzu y'abandi. Kuba nyuma y'urupfu rw'umubyeyi wabo Nkundabatware, Uwanyirigira ari we wabaye umukuru w'umuryango nyamara ntawe hari icyo yigeze avuga kuri ayo masezerano, cyangwa ngo ayaregere mu nkiko hagashira imyaka icumi yose, basanga nta kundi kuyemera birenze ibyo. Bavuga ko rero badashyigikiye ubwo buriganya, umutungo Batamuriza Francine yaguze ukaba ukwiye kumwandikwaho. [28] Twagiramariya avuga ko koko umubyeyi wabo yamfuye yatanze ikirego asaba ko ayo masezerano ateshwa agaciro, ariko ko nyuma yo gutanga ikirego atitabye, urubanza rurasibwa, arubyukije yitaba imana rutaraburanishwa, icyo gihe hahamagazwa abazungura be ngo barukomeze, kandi abahamagawe ni Uwanyirigira Telesphore na Dusabimana Onesphore ari nabo bari bumvikanye mu kugurisha uwo mutungo. Avuga ko kuba nabo batarigeze bitaba rukongera rugasibwa, nacyo ari ikindi kimenyetso cy'uko ayo masezerano bayazi kandi bayemera, ko ibyo badukanye nyuma byo guhuguza atazi aho babikura. [29] Uburanira Batamuriza yabajijwe icyo yagaragarijwe giha Twagiramariya uburenganzira bwo kugurisha inzu y'umuryango, asubiza ko hari ibyemezo ubuyobozi bwari bwaramuhaye

kandi akaba ari nta cyasimbura ibyo byemezo, uretse ko iki kibazo cyari kubazwa Twagiramariya Chantal kuko ariwe wagurishije, naho uwaguze akaba yaraguranye umutima mwiza kandi n'abavandimwe bakaba bari babizi, ari nayo mpamvu 10.000.000frw yishyuwe yahise ashyirwa kuri compte y'umuvandimwe umwe witwa Telesphore. [30] Me Nsabiyumva Cyubahiro avuga ko Twagiramariya yagurishije inzu nk'umutungo we, kandi bakaba batagaragaza aho yahereye ayigurisha nk'umutungo we mu izina rye, impapuro bagaragaza zo kuba inzu ibanditseho akaba ari nta gaciro zahabwa. UKO URUKIKO RUBIBONA [31] Urukiko rubona ko kuwa 29/10/2010 habaye amasezerano y'ubugure hagati ya Twagiramariya na Batamuriza agaragaza ko Twagiramariya yagurishije inzu ye yahawe n'umuryango, ifite numero y'ibarura 144 iri Kicukiro, umurenge wa Gatenga, akagari ka Nyanza umudugudu wa Taba ku mafaranga y'u Rwanda 14.000.000, Batamuriza ahita yishyura 10.000.000 frw, bumvikana ko 4.000.000Frw zisigaye azazitanga aruko Twagiramariya amaze kubona ibyangombwa byose by'inzu. Bumvikanye kandi ko amafaranga yose azanyuzwa kuri

Page 8

compte no 0283001-85 iri muri BK ku izina ry'Uwanyirigira Telesphore hakimara gusinywa aya masezerano. Aya mafaranga yashyizwe kuri iyi compte na Batamuriza kuwa 1/10/2010. [32] Urukiko rubona ko aya masezerano ari nta n'umuvandimwe n'umwe wa Twagiramariya Chantal wayashyizeho umukono, mu rukiko Twagiramariya akaba yarasobanuye ko abayasinyeho ari inshuti z'umuryango. [33] Urukiko rubona ko aburana, Twagiramariya yavuze ko iyi nzu atigeze ayihabwa ahubwo ko yayigurishije ari iy'umuryango, akaba yarayigurishije umuryango wose ubizi kugira ngo bakemure ibibazo umuryango wari ufite birimo amadeni ya banki n'imanza ndetse n'ibindi birimo n'ubukwe bwa Telesphore. [34] Uwanyirigira avuga ko ubu bugure we n'abavandimwe be batigeze babumenya, ndetse na se akiriho akaba yaraburegeye uretse ko yaje kwitaba Imana urubanza rutaracibwa. [35] Urukiko rubona habaye urubanza RC 0124/06/TGI/Nyge rwaciye ku wa 28/11/2006 rwemeza ko Nkundabatware Venant mwene Maburanturo Paul na Nyiragakeri Valerie, washakanye na Akimanizanye Primitive witabye Imana yatswe ubushobozi, rutegeka ko Twagiramariya Chantal agizwe umufasha we (Conseil Judiciaire) [36] Ingingo ya 451 y'itegeko ryo kuwa 27 ukwakira 1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, ryakoreshwaga mu gihe Nkundabatware yamburwaga ubushobozi ndetse n'igihe Twagiramariya yagurishirije iyi nzu, iteganya ko kwakwa ubushobozi birangirana n'uko impamvu zabiteye nazo zivuyeho, nyamara kubivana ku muntu byemezwa hakurikijwe imihango imwe n'ikurikizwa igihe cyo kwakwa ubushobozi, kandi uwatswe ubushobozi ntashobora gusubirana uburenganzira bwe mbere y'urubanza rubivanaho. [37] Urukiko rubona ko kuba hari urubanza Nkundabatware yari yaregeye asaba ko ubu bugure bwaseswa rugasibwa, rwabyutswa Nkundabatware akitaba imana rutaraburanishwa, hatumizwa abazungura be ntibitabe na none rugasibwa, ntibitesha agaciro urubanza rwamwambuye ubushobozi, kuko yatanze iki kirego urubanza rugifite agaciro, bityo akaba ari nta gikorwa yari yemerewe gukora kuko ingingo ya 448 y'iri tegeko rimaze kuvugwa iteganya ko uwatswe ubushobozi afatwa nk'umwana muto. [38] Nubwo bigaraga ko Batamuriza yagurishije iyi nzu

ayita iye, Uwanyirigira akavuga ko yayigurishije mu buriganya ahinduye se umusazi kandi ari muzima, amasezerano yo ku wa 22/6/2012 avuguruza ibyo avuga, kuko we na Twagiramariya na Mbabazi Gloria, Twagiramariya ahagarariye se Nkundabatware Venant bagurishije Twahirwa Ephrem inzu iri mu kibanza no 386 iri Kicukiro. Aya masezerano ashimangira ko Nkundabatware yari yarambuwe ubushobozi n'Uwanyirigira Telesphore abyemera, kuko ari nta yindi mpamvu nimwe yabashije kugaragariza urukiko ituma muri aya masezerano se ahagararirwa na Twagiramariya Chantal muri ubu bugure, iy'ukuri akaba ari uru rubanza rwaciwe n'urukiko rumwambura ubushobozi. [39] Biragaragara koko ko Twagiramariya yagurishije iyi nzu ayita iye, kandi atariko byagombaga kugenda hakurikijwe ububasha yari afite bwo kwishingira se cyangwa kumubera umufasha. Nubwo bimeze bityo ariko, Uwanyirigira Telesphore yamenye neza ibyakozwe, ndetse nubwo atasinye mu masezerano, kuba ubwishyu bwaranyujijwe kuri compte ye ni, ikigaragaza ko yari abizi kandi yabyemeraga. Nubwo avuga ko aya mafaranga atigeze

Page 9

ayakoresha ko yakoreshejwe na Twagiramariya wenyine, urukiko rurasanga ari nta bimenyetso abitangira, kuko ari nta hagaragaraga ko yaba yaranayamusubije ngo urukiko ruhereho ruvuga ko ariwe yahereyeho wenyine. [40] 40. Ingingo ya 108 12/06/2004 y'itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ibimenyetso bicukumbuwe no gusesengura urubanza ari ibimenyetso bitacukumbuwe n'amategeko, bicukumburwa n'ubwenge n'ubushishozi bw'abacamanza. Abacamanza bagomba kwemera gusa ibyo bimenyetso iyo bikomeye, bisobanuye kandi bihuje. [41] Twagiramariya yaragurishije inzu ya se abandi bavandimwe babizi hashingiwe ku kuba Uwanyirigira yaramenye ubu bugure, ndetse akanabugiramo inyungu ku bw'aya mafaranga yanyujijwe kuri compte ye nkuko urukiko rubisobanuye haruguru. Kuba uyu munsu Uwanyirigira yifatanyaga n'abandi bavandimwe bagahakana ibyo Twagiramariya Chantal yakozwe, urukiko rubibonamo kwirengagiza ukuri. Babaye batabizi imigurishirize y'iyi nzu, aba bavandimwe bandi bakagombye kubaza Uwanyirigira Telesphore iby'aya mafaranga y'ubugure yanyujijwe kuri compte ye kuko akomoka ku bugure batemera. Ariko kuba batagira icyo bayamubazaho ahubwo bakifatanyaga na we bashingiye gusa ku miterere y'amasezerano, ni ikigaragaza ko bashakaga kuguhuguza uwaguze birengagiza ibyo bazi. [42] Ntawe ushobora kwitwaza ikosa yakozwe ngo arishingireho arisabishe uburenganzira, aribyo bivugwa mu ndimi z'amahanga "nemo auditur propriam turpitudinem allegans" "nul ne peut se prévaloir de sa propre turpitude"¹. Iyi myitwarire itemewe n'amategeko aba bavandimwe bese bagize mu gihe aya masezerano yakorwaga Twagiramariya agurisha inzu y'umuryango mu izina rye bakakira amafaranga, ntibigomba kwemerwa ko bo ubwabo aribo baza kuyitesha agaciro bahindukirana umwe muri bo bamusunikiraho amakosa, maze bagasaba ko amasezerano yakozwe aseswa. [43] Batamuriza Francine agura, yaguze n'ugaragara nka nyiri inzu hashingiwe ku mitere y'amasezerano. Ahubwo abamugurishije (Twagiramariya n'abavandimwe be) nibo batari bafite umutima ugororotse kuko bakiriye aya mafaranga bazi neza ko umuvandimwe yagurishije inzu ya se mu buryo bunyuranije n'amategeko. Kubera rero ibisobanuro byose urukiko rumaze gutanga, Batamuriza Francine agomba kugumana inzu yaguze, agatanga 4.000.000frw yasigayemo ku giciro, abazungura ba Nkundabatware bakaba

bategetswe kumuhinduriza iyi nzu ikamwandikwaho. Gusuzuma indishyi z'ikurikiranarubanza n'igihembo cy'avoka zisabwa n'ababuranyi. [44] Me Nsabiyumva Cyubahiro avuga ko kuri uru rwego, uwareze yategekwa kwishyura abarezwe bose 3.500.000frw y'igihembo cy'avocat kuko mbere hatanzwe make ugereranyije n'umubare w'abaregwaga. [45] Uburanira Twagiramariya Chantal avuga ko nta ndishyi zacibwa Batamuriza kuko nta kosa yakozwe, ko kuba yarareze ashaka kwandikwaho umutungo we ari uburenganzira bwe. Avuga ko ahubwo izo asaba yahabwa izicirirtse uko izo yasabye ari nyinshi. 1 <https://fr.wikipedia.org/wiki>

Page 10

[46] Uburanira Batamuriza avuga ko indishyi yaregeye azikwiye, urubanza rwajuririwe, uru Rukiko rukavuga ko ruhindutse mu ngingo zarwo zose, ariko Me Nsabiyumva Cyubahiro we akavuga ko izi ndishyi ntazo yari akwiye kuko yaguze mu buriganya, ko ahubwo yaciwe nkeya. UKO URUKIKO RUBIBONA [47] Ingingo ya 34 y'amabwiriza No 01/2014 agenga ibihembo mbonera by'abavoka iteganya ko bitabangamiye ibiteganywa n'ingingo zibanziriza iyi, zo muri aya mabwiriza, avoka afite uburenganzira bwo kugena igihembo ashyize mu gaciro, ariko kitari munsu y'amafaranga 500.000Frw, kandi kitarengeje amafaranga 3.000.000Frw hiyongeyeho iyo bishoboka, igihembo kibarwa hakurikijwe ibyagezweho ku ijanisha riteganyijwe mu gace ka II k'ingingo ya 23. Naho ingingo ya 33 yo iteganya ko mu bujurire, avoka w'urega n'uw'uregwa bafite uburenganzira ira kuri ½ cy'igihembo cyumvikanyweho ku rwego rwa mbere. [48] Urukiko rubona ko ku rwego rwa mbere Batamuriza Marie Francine yari yasabye abazungura ba Nkundabatware Venant indishyi zingana na 1.000.000Frw zo kumushora mu manza na 500.000Frw y'igihembo cy'avoka agasaba ko urukiko yajuririye rwazimuha. [49] Urukiko rushingiye ku biteganywa n'iyi ngingo, rurasanga Batamuriza Marie Francine agomba guhabwa n'abazungura ba Nkundabatware Venant indishyi zingana na 1.000.000frw agizwe na 750.000frw y'igihembo cy'avoka ku rwego rwa mbere no mu bujurire, na 250.000frw y'ikurikiranarubanza, yose hamwe agahwana na 1.000.000 frw. III. ICYEMEZO CY'URUKIKO. [50] Rwemeje ko ubujurire bwa Batamuriza Marie Francine bufite ishingiro. [51] Remeje ko urubanza RC 00883/2016/TGI/NYGE rwajuririwe ruhindutse mu ngingo zarwo zose. [52] Rutegetse ko Batamuriza Marie Francine agumana inzu ya Nkundabatware Venant yaguze na Twagiramariya Chantal kuwa 29/9/2010, yari ibaruye kuri no 144 nkuko biri mu masezerano yo kuri iyo tariki. [53] Rutegetse Batamuriza Marie Francine kwishyura abazungura ba Nkundabatware Venant miriyoni enye z'amafaranga y'u Rwanda (4.000.000Frw) yari yasigayemo agura, nawe akandikwaho iyi nzu. [54] Rutegetse Uwanyirigira Telesphore, Ishimwe Eric, Ngabiwenimana Christophe, Bizimana Anastase, Manirarora Janvier, Dusabimana Onesphore, Mbabazi Gloria na Nkundimana Christian, kwishyura Batamuriza Marie Francine, miriyoni imwe y'amafaranga y'u Rwanda (1.000.000frw) y'indishyi z'ikurikiranarubanza n'igihembo cy'avoka, no kumusubiza 90.000frw y'ingwate y'igarama yatanze mu nkiko zombi.

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