

RWANDA / JUDGMENT

BIMENYIMANA v. NDERERIMANA

RS/INJUST/RCOM 00006/2023/SC

COURT

Supreme Court

DECIDED

18 July 2025

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BIMENYIMANA v. NDERERIMANA

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Text**Page 1**

BIMENYIMANA v. NDERERIMANA [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00006/2023/SC (Hitiyaremye, P.J., Cyanzayire, na Kalihangabo J.) 18 Nyakanga 2025] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Cyamunara – Cyamunara iteshwa agaciro iyo yakozwe mu buryo bunyuranyije n'amategeko – Kutamenyesha nyir'umutungo utezwa cyamunara amatangazo yayo ku gihe ndetse ntanatangazwe mu gitangazamakuru icyo ari cyo cyose, kutubahiriza amategeko agenga ishingana n'ifatira, n'igihe yakozwe hatubahirijwe ibihe biteganywa, bifatwa nk'inenge ikomeye yatuma cyamunara iteshwa agaciro. Indishyi – Indishyi z'imbarangamirabukungu – Uwaguze umutungo nta buryarya ntiyategekwa gukuraho ibikorwa yongeyeho nyuma yo kuwugura, ahubwo ahabwa indishyi zingana n'agaciro k'abyo iyo bibaye ngombwa ko awusubiza nyirawo. Incamake y'ikibazo: Ndererimana Gédéon avuga ko Umuhesha w'inkiko w'umwuga Bimenyimana Innocent yateje cyamunara umutungo we mu buryo bunyuranyije n'amategeko, bituma atanga ikirego mu Rukiko mu Rukiko rw'Ibanze rwa Muhoza asaba ko iyo cyamunara iteshwa agaciro kuko atigeze ayimenyeshwa, uru Rukiko rwemeza ko ikirego kitakiriwe kubera ko yaregeye urukiko rutabifitiye ububasha. Nyuma y'icyo cyemezo, Ndererimana yatanze ikirego mu Rukiko rw'Ubucuruzi asaba ko cyamunara yabaye ku mutungo

we iteshwa agaciro kuko Umuhesha w'Inkiko atigeze ayimumenyesha ndetse akaba ataranubahirije imihango iteganyijwe n'amategeko. Uru Rukiko rwemeje ko ikirego kitakiriwe kuko cyatanzwe impitagihe. Bimenyimana yatanze inzitizi asaba ko ikirego kitakwirwa avuga ko cyatanzwe impitagihe kuko cyamunara yabaye nyuma y'imyaka ibiri kandi itegeko riteganywa ko utishimiye cyamunara atanga ikirego gisaba kuyitesha mu gihe cy'iminsi 15. Uru rukiko rwemeza ko ikirego kitakiriwe. Ndererimana yajuririyeye mu Rukiko Rukuru rw'Ubucuruzi avuga ko Urukiko rw'Ubucuruzi rwanze kwakira ikirego cye rushingiye ku kuba yaratinze kugitanga nyamara atari byo, kubera ko uherye igihe yamenyeye iby'igurishwa ry'umutungo we, nta gukererwa kwabayeho kuko yatanze ikirego mu gihe giteganywa n'amategeko, bityo asaba Urukiko Rukuru rw'Ubucuruzi guha ishingiro ikirego cye no gutesha agaciro cyamunara yaregeraga. Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa Ndererimana bufite ishingiro, rutegeka ko imikirize y'urubanza RCOM 01295/2022/TC rwajuririyeye ihinduka kuri byose kuko ikirego nticyakiriwe mu rukiko rubanza kandi cyagombaga kwakirwa nyuma yo kubona ko ibihe byo gutanga ikirego byubahirijwe. Uru Rukiko ariko ntirwategetse ko urubanza rwaciye n'Urukiko rw'Ubucuruzi ruteshwa agaciro ndetse rwohereswemo kugirango ruburanishwe mu mizi. Bimenyimana yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Page 2

Uwegukanye umutungo wagurishijwe muri cyamunara nawe yifuje kugoboka muri uru rubanza kubera ko warumaze kumwandikwaho, maze arabyemererwa kuko arufitemo inyungu. Muri uru rubanza rw'akarengane, Bimenyimana Innocent (Umuhesha w'Inkiko) yaburanye avuga ko umutungo uburanwa wa Ndererimana watejwe cyamunara kuko atishyuye inguzanyo yari afitiye sosiyete Universal Trading Ltd. Bimenyimana avuga kandi ko Ndererimana yatanze ikirego gisaba gutesha agaciro cyamunara ariko ntiyubahiriza ibihe byateganyijwe n'amategeko byo kuyiregera kuko cyamunara yabaye ku wa 26/05/2020, agatanga ikirego ku wa 25/05/2022, ni ukuvuga nyuma y'imyaka 2, kandi yaragombaga kugitanga mu gihe kitarenze iminsi 15 nkuko itegeko ribiteganywa. Ndererimana Gédéon yiregura avuga ko mbere atigeze amenyeshwa ibijyanye na cyamunara yagurishirijwemo umutungo we, akaba yarayimenye ku wa 10/05/2022 ubwo Bimenyimana Innocent yamwohererezaga raporo yayo kuri email, maze atanga ikirego cyo kuyitesha agaciro ikirego mu Rukiko rw'Ibanze rwa Muhoza ku wa 25/05/2022, ariko nticyakirwa kubera ko urwo rukiko rwemeje ko rudafite ububasha, ariko nyuma yaho yongeye kutanga ikindi kirego mu Rukiko rw'Ubucuruzi ku wa 25/07/2022, bityo ko iminsi 15 ivugwa n'Itegeko yayubahirije. Ndererimana Gédéon avuga kandi ko ku itariki ya 26/05/2020 uwo baburana nawe avuga ko cyamunara yabereyeho, byari mu gihe cya Covid 19, bityo ko bikaba bitarashobokaga ko cyamunara yabaho hashingiwe ku mabwiriza y'inama y'Abaminisitiri yo ku wa 18/05/2020. Nyuma y'isesengura, Urukiko rusanga, uherye ku gihe Ndererimana Gédéon yamenyesherejweho raporo ya cyamunara, iminsi 15 ivugwa mu ngingo ya 260, igika cya 3, y'Itegeko N°22/2018 ryo ku wa 29/04/2018 yarubahirijwe nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye, bityo ko ikirego cye mu Rukiko rw'Ubucuruzi cyaragombaga kwakirwa kigasuzumwa, kuko cyatanzwe mu buryo bukurikije amategeko, maze urukiko rwemeza ko

ikirego cya Bimenyimana Innocent gisaba gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro gifite, bityo ko iburanisha rizakomeza hasuzumwa mu mizi ikirego Ndererimana Gédéon yari yashyikirije Urukiko rw'Ubucuruzi kijyanye no gutesha agaciro cyamunara hamwe n'ikibazo cy'indishyi. Iburanisha mu ruhamye ryakomeje ku wa 06/01/2025, hasuzumwa ibibazo bijyanye no kumenya niba cyamunara yakorewe ku mutungo UPI: 4/03/03/04/3678 yateshwa agaciro ndetse n'ishingiro ry'indishyi zisabwa mu rubanza. Mu gihe Urukiko rwari rwiherereye ngo ruce urubanza, rwasanze Uwambayinema Anne yarashyize muri dosiye raporo y'igenagaciro rigaragaza ibyo avuga ko yongeye ku mutungo, asaba ko yabisubizwa igihe cyamunara yateshwa agaciro, bituma ku wa 07/02/2025 Urukiko ruca urubanza rubanziriza urundi, maze rwemeza ko iburanisha rizongera gupfundurwa kugira ngo ababuranyi bagire icyo bavuga kuri iryo genagaciro. Mu iburanisha, Ndererimana avuga ko impamvu ashingiraho asaba ko cyamunara yakorewe ku mutungo we yateshwa agaciro ni uko hatubahirijwe amategeko agenga cyamunara harimo ishingana, ifatira n'itangazwa rya cyamunara kandi ko atamenyeshejwe imihango yose ijyanye na yo, bityo asaba ko yasubizwa umutungo we.

Page 3

Bimenyimana yiregura avuga ko cyamunara yabaye itateshwa agaciro kuko yakozwe ibisabwa n'amategeko byose, avuga kandi ko Ndererimana atarigeze arangiza ku bushake urubanza rwagombaga kurangizwa ku gahato, bityo ko cyamunara ikwiye kugumana agaciro kayo kubera ko yakozwe mu buryo bukurikije amategeko. Uwambayinema Anne yagobotse ku bushake avuga ko yaguze umutungo uburanwa muri cyamunara mu buryo bukurikije amategeko, akaba yaramaze kuwiyandikishijeho n'umugabo we, avuga kandi ko hari imirimo yongereye kuri iyo mutungo ifite agaciro kangana na 9.984.679 Frw, asaba kuyasubizwa mu gihe cyamunara itehejwe agaciro. Ndererimana Gédéon yiregura avuga ko igenagaciro ryatanze na Uwambayinema Anne rigaragaramo gukabya kuko igenagaciro rihinyuza bakoze rigaragaza ko ibikorwa byakozwe bifite agaciro ka 4.903.6118Frw habariwemo n'ak'ubutaka. Bimenyimana Innocent nawe yiregura avuga ko raporo z'igenagaciro zatanze n'ababuranyi zigaragaza kuvuguruzanya ndetse n'ubuso bw'ubutaka butandukanye, akaba asaba ko Urukiko rwakwishyiriraho umugenagaciro ugagaragaza agaciro n'ubuso nyakuri. Incamake y'icyemezo: 1. Kutamenyesha nyir'umutungo utezwa cyamunara amatangazo yayo ku gihe ndetse ntanatangazwe mu gitangazamakuru icyo ari cyo cyose, kutubahiriza amategeko agenga ishingana n'ifatira, n'igihe yakozwe hatubahirijwe ibihe biteganywa, bifatwa nk'inenge ikomeye yatuma cyamunara iteshwa agaciro.

2. Uwaguze umutungo nta buryarya ntiyategekwa gukuraho ibikorwa yongereye nyuma yo kuwugura, ahubwo ahabwa indishyi zingana n'agaciro k'abyo iyo bibaye ngombwa ko awusubiza nyirawo.
3. Indishyi z'akababaro zihabwa uwazisabye iyo bigaragara ko yahungabanyijwe no gusubirana uburenganzira yavukijwe.

Ikirego gisaba gutesha agaciro cyamunara gifite ishingiro.

Amategako yashingiweho: Itegeko N 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 260; Itegeko Ngenga N 03/2013/OL ryo ku wa 16/06/2013 rikuraho Itegeko Ngenga N 08/2005 ryo ku wa 14/07/2005 rigenga imikoreshereze n'imicungire y'ubutaka mu Rwanda, ingingo ya 35. Imanza zifashishijwe: Urubanza RS/INJUST/RC 00024/2018/CS 20, rwa Ngizweninshuti Albert na Muhima Giovanni; rwaciwe n'urukiko rw'Ikirenga ku wa 21/02/20; Urubanza RS/INJUST/RC 00007/2018/SC rwa Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin; rwaciwe n'Urukiko rw'Ikirenga, ku wa 13/03/2020;

Page 4

Urubanza RS/ INJUST/RC 00004/2019/SC rwa Mukamana Mamique na bagenzi be na Candali Vèrene na bagenzi be; rwaciwe n'Urukiko rw'Ikirenga kuwa 28/07/2020. Urubanza I. IMITERERE Y'URUBANZA

- [1] Bimenyimana Innocent, Umuhesha w'inkiko w'umwuga, yateje cyamunara umutungo ubaruye kuri UPI: 4/03/03/04/3678 wa Ndererimana Gédéon harangizwa urubanza RCOM 00335/2019/TC rwaciwe ku wa 29/04/2019 yatsinzwemo na Universal Trading Ltd, agategekwa kuyishyura 13.067.050Frw; 202.191Frw y'inyungu; 600.000Frw akubiyemo igihembo cya Avoka, ay'ikurikiranarubanza n'igihembo cy'Umuhesha w'inkiko na 20.000Frw y'amagarama yishyuye atanga ikirego.
- [2] Ndererimana Gédéon yatanze ikirego mu Rukiko rw'Ibanze rwa Muhoza asaba gutesha agaciro iyo cyamunara, mu rubanza RC 00359/2022/TB/MUH rwaciwe ku wa 17/07/2022, urwo Rukiko rwemeza ko ikirego kitakiriwe kubera ko yaregeye urukiko rutabifitiye ububasha. Nyuma y'icyo cyemezo yatanze ikirego mu Rukiko rw'Ubucuruzi asaba ko cyamunara yabaye ku mutungo we iteshwa agaciro kuko Umuhesha w'Inkiko atigeze ayimumenyesha ndetse akaba ataranubahirije imihango iteganyijwe n'amategako. Bimenyimana Innocent yatanze inzitizi asaba ko ikirego cya Ndererimana Gédéon kitakwagirwa kuko yagitanze impitagihe.
- [3] Mu rubanza RCOM 01295/2022/TC rwaciwe ku wa 05/09/2022, Urukiko rw'Ubucuruzi rwemeje ko ikirego cya Ndererimana Gédéon kitakiriwe, kubera ko yagitanze atubahirije ibihe biteganywa mu ngingo ya 260 y'Itegeko N 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, rumutegeka kwishyura Bimenyimana Innocent 500.000Frw y'igihembo cya Avoka na 50.000Frw y'ikurikiranarubanza.
- [4] Ku wa 12/09/2022, Ndererimana Gédéon yajuriye mu Rukiko Rukuru rw'Ubucuruzi avuga ko Urukiko rw'Ubucuruzi rwanze kwakira ikirego cye rushingiye ku kuba yaratanze kugitanga nyamara atari byo, kubera ko uhareye igihe yamenyeye iby'igurishwa ry'umutungo we ku wa 10/05/2022, nta gukererwa kwabayeho; ko kandi yaciwe indishyi zidafite icyo zishingiyeho, asaba Urukiko Rukuru rw'Ubucuruzi guha ishingiro ikirego cye no gutesha agaciro cyamunara yaregeraga.

- [5] Bimenyimana Innocent yatanze inzitizi yo kutakira ubujurire bwa Ndererimana Gédéon kubera ko yatinze kujurira, anavuga ko no ku rwego rwa mbere ikirego kitagombaga kwakirwa nk'uko Urukiko rw'Ubucuruzi rwabibonye kubera ko yamenyeshejwe igurishwa ry'umutungo we mu cyamunara, hagashira igihe kigera ku myaka 2 atararegera kuyitesha agaciro, asaba ko iyo nzitizi na yo yakongera gusuzumwa, urubanza rwaciwe ku rwego rwa mbere rukagumaho.

1 Igika cya 4 cy'iyi ngingo kivuga ko ikirego gisaba gutesha agaciro cyamunara gitangwa mu gihe kitarenze iminsi cumi n'itanu (15) uhereye umunsi cyamunara yabereyeho.

Page 5

- [6] Mu rubanza RCOMA 00599/2022/HCC rwaciwe ku wa 07/10/2022, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa Ndererimana Gédéon bufite ishingiye kubera ko nta kimenyetso Bimenyimana Innocent yigeze agaragaza cyerekana ko imihango yose ijyanye na cyamunara yayimenyesheje Ndererimana Gédéon mu bihe biteganyijwe n'amategeko, rutegeka ko imikirize y'urubanza RCOM 01295/2022/TC rwajuririwe ihinduka kuri byose.
- [7] Bimenyimana Innocent yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RCOMA 00599/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 07/10/2022, rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urwo rubanza rusubirwamo, maze mu cyemezo N 173/CJ/2023 cyo ku wa 27/11/2023, yemeza ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ubujurire kugira ngo ruzongere ruburanishwe.
- [8] Uru rubanza rwahamagawe bwa mbere ku wa 06/06/2024, ariko ntirwaburanishwa ahubwo uru Rukiko rwemeza ko rusubizwa mu bwanditsi bw'Urukiko kugira ngo ruzabanze gukorerwa inama ntegururubanza, ariko Bimenyimana Innocent watumye itaba mbere ahanishwa ihazabu mbonezamubano ingana na 50.000 Frw.
- [9] Iburanisha ry'urubanza ryongeye gusubukurwa, ribera mu ruhame ku wa 09/10/2024, Bimenyimana Innocent yunganirwa na Me Ndayishimiye Jean Paul, naho Ndererimana Gédéon yunganiwe na Me Munyentwari Charles. Hitabye kandi Me Gahutu Joseph ahagarariye Uwambayinema Anne wifuje kugoboka muri uru rubanza kubera ko ari we waguze mu cyamunara umutungo ufite UPI: 4/03/03/04/3678 ndetse ukaba waramaze kumwandikwaho we n'umugabo we Tuyiringire Joseph. [10] Nyuma yo kumva ibisobanuro byatanze n'ababuranyi ku cyifuzo cyo kugoboka muri uru rubanza cyatanze na Uwambayinema Anne, Urukiko rushingiye ku murongo rwatanze mu manza zitandukanye usobanura ko umuntu wese afite uburenganzira bwo kugoboka ku bushake mu rubanza rw'akarengane akurikije ibiteganywa n'ingingo ya 113 na 114 z'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, 2 no kuba umutungo wagurishijwe mu cyamunara waraguzwe na Uwambayinema Anne ndetse ukaba umwanditseho, rwemeje ko yemerewe kugoboka muri uru rubanza kuko arufitemo inyungu. [11] Mbere y'iburanisha mu mizi,

Urukiko rwabanje gusuzuma ibibazo bikurikira:

- a. Kumenya niba ubujurire bwa Ndererimana Gédéon butaragombaga kwakirwa mu Rukiko Rukuru rw'Ubucuruzi;
- b. Kumenya niba Urukiko rw'Ubucuruzi nta bubasha rwari rufite bwo kuburanisha ikirego cyo gutesha agaciro cyamunara yakorewe ku mutungo wa Ndererimana Gédéon;
- c. Kumenya niba Ndererimana Gédéon yaratanze kuregera gutesha agaciro cyamunara.

2 Reba icyemezo cy'Urukiko cyafashwe mu iburanisha ryo ku wa 13/01/2021

Page 6

- [12] Kuri ibyo bibazo byose, ku itariki ya 15/11/2024, Urukiko rwaciye urubanza rubanziriza urundi rwemezako ibi bikurikira: [13] Ku kibazo cyo kumenya niba ubujurire bwa Ndererimana Gédéon butaragombaga kwakirwa mu Rukiko Rukuru rw'Ubucuruzi hashingiwe ku kuba atarubahirije igihe cy'iminsi itatu (3) yo kujurira iteganywa n'itegeko, Urukiko rwasanze iyo nzitizi yatanze mu Rukiko Rukuru rw'Ubucuruzi ariko ntirwagira icyo ruyivugaho. Urukiko rwasanze urubanza RCOM 01295/2022/TC rwaraburanishijwe ku wa 01/09/2022, ababuranyi bamenyeshwa ko ruzasomwa ku wa 05/09/2022, uwo muni rurasomwa ariko inyandikomvugo y'isomwa ishyirwa muri IECMS ku wa 06/09/2022, naho kopi y'urubanza yo ishyirwa muri dosiye ku wa 07/09/2022. Rushingiye ku ngingo ya 188, igika cya 23 n'ya 2754, z'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, rwasanze ibihe by'ubujurire bigomba kubarwa guhera ku wa 08/09/2022, umunsi wa nyuma wo kujurira ukaba wari ku wa 12/09/2022 kubera ko itariki ya 10 n'ya 11/09/2022 yari iminsi y'ikiruhuko. Urukiko rwemeje ko kuba ubujurire bwatanze ku wa 12/09/2022, Ndererimana Gédéon yubahirije ibihe by'ubujurire.
- [14] Ku kibazo cyo kumenya niba Urukiko rw'Ubucuruzi nta bubasha rwari rufite bwo kuburanisha ikirego cyo gutesha agaciro cyamunara yakorewe ku mutungo wa Ndererimana Gédéon, uru Rukiko rwasanze kuba nta muburanyi wasabye ko icyo kibazo gisuzumwa ngo kigibweho impaka, kitagomba no gusuzumwa mu rwego rw'akarengane muri uru rubanza. Urukiko rwashingiye ku murongo watanze n'uru Rukiko w'uko kuba urubanza rushobora gusubirishwamo ku mpamvu z'akarengane rukaburanishwa bundi bushya, bitavuga ko umuburanyi yakwitwaza iyo nzira kugira ngo abe yazana ibirego bishya kandi bitararegwe ntibinasuzumwe mu rubanza rusabirwa gusubirwamo, kuko umuburanyi atavugaga ko yagize akarengane ku kibazo atigeze asaba Urukiko gusuzuma.⁵ [15] Naho ku kibazo kijyanye no kumenya niba Ndererimana Gédéon yaratanze kuregera gutesha agaciro cyamunara, hakurikijwe ibisobanuro byatanze muri urwo rubanza, Urukiko rwasanze ikirego Ndererimana Gédéon yatanze mu Rukiko rw'Ubucuruzi asaba gutesha agaciro cyamunara yaragitanze mu buryo bukurikije amategeko. [16] Urukiko rwanzuye ko ikirego cyatanze na Bimenyimana Innocent gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00599/2022/HCC rwaciye

3 Iyo ngingo iteganya ko: “Igihe cyo kujuririra icyemezo cyafashwe ku kirego kirebana no gutesha agaciro cyamunara ari iminsi itarenze itatu (3) y’akazi uhereye ku munsu icyemezo cyasomeweho cyangwa ababuranyi bakimenyeyeho”.

4 Iyo ngingo iteganya ko: “Ku bihe bibarwa mu minsi cyangwa mu masaha, bibarwa umunsu ku munsu, n’isaha ku isaha hakurikijwe igihe bimara kandi umunsu igikorwa cyakoreweho ntubarwamo, ahubwo habarwa umunsu wa nyuma kigomba kurangiraho”.

5 Reba urubanza RS/INJUST/RC 00024/2018/CS rwaciwe ku wa 21/02/2020, haburana Ngizweninshuti Albert na Muhima Giovanni, urubanza RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin n’urubanza RS/ INJUST/RC 00004/2019/SC rwaciwe kuwa 28/07/2020 haburana Mukamana Mamique na bagenzi be na Candali Vèrene na bagenzi be).

Page 7

n’Urukiko Rukuru rw’Ubucuruzi ku wa 07/10/2022, nta shingiro gifite; rwemeza ko ikirego cyatanze na Ndererimana Gédéon mu Rukiko rw’Ubucuruzi cyagombaga kwakirwa kuko cyatanze mu buryo bukurikije amategeko, ruvuga ko iburanisha rizakomeza hasuzumwa mu mizi ikirego Ndererimana Gédéon yari yashyikirije Urukiko rw’Ubucuruzi. [17] Iburanisha mu ruhame ryakomeje ku wa 06/01/2025, hasuzumwa ibibazo bijyanye no kumenya niba cyamunara yakorewe ku mutungo UPI: 4/03/03/04/3678 yateshwa agaciro ndetse n’ishingiro ry’indishyi zisabwa mu rubanza. [18] Mu gihe Urukiko rwari rwiherereye ngo ruce urubanza, rwasanze ku wa 21/01/2025 Uwambayinema Anne yarashyize muri dosiye raporo y’igenagaciro rigaragaza ibyo avuga ko yongeye ku mutungo asaba ko yasubizwa igihe cyamunara yateshwa agaciro, bituma ku wa 07/02/2025 Urukiko ruca urubanza rubanziriza urundi rwemeza ko iburanisha rizongera gupfundurwa kugira ngo ababuranyi bagire icyo bavuga kuri iryo genagaciro. [19] Urubanza rwimuriwe ku wa 03/04/2025, hasuzumwa raporo y’umuhanga yatanze na Uwambayinema Anne ndetse na raporo ivuguruzwa yatanze na Ndererimana Gédéon. Ababuranyi ntibashoboye kuzemeranywaho, Urukiko rufata icyemezo cy’uko urubanza rusubikwa, hagashyirwaho umugenagaciro ugenwe n’Urukiko, ndetse n’Ikigo cy’Igihugu gishinzwe Ubutaka kigatanga raporo ikosora imbibi z’ikibanza kiburanwa kuko ababuranyi bemeranyaga ko kirimo amakosa. [20] Iburanisha ryimuriwe ku wa 04/06/2025, kugira ngo ababuranyi bagire icyo bavuga kuri raporo y’Ikigo cy’ubutaka n’iy’umugenagaciro washyizweho n’Urukiko, uwo munsu ugeze ababuranyi baritaba bunganiwe cyangwa bahagarariwe nka mbere. II. IBIBAZO BIGIZE URUBANZA N’ISESENGURWA RYABYO 1. Kumenya niba cyamunara yakorewe ku mutungo UPI :4/03/03/04/3678 yateshwa agaciro -Ibijyanye na cyamunara [21] Ndererimana Gédéon na Me Munyentwari Charles umwunganira bavuga ko impamvu bashingiraho basaba ko cyamunara yakorewe ku mutungo we yateshwa agaciro ari uko:

- i. Hatubahirijwe amategeko agenga ishingana, ifatira n’itangazwa rya cyamunara kandi atamenyeshejwe imihango yose ijyanye na yo. Avuga ko ahubwo yamenye iby’iyo cyamunara yakorewe ku mutungo we ku wa 10/05/2022 ubwo Bimenyimana Innocent yamwohererezaga kuri e-mail inyandiko yo ku wa 09/05/2022 irimo raporo y’amafaranga yayivuyemo, ndetse ku

mugereka wayo agashyiraho na raporo ya cyamunara yo ku wa 26/05/2020. Avuga ko ibi bigaragaza ko iyo mihango itakozwe akaba ari inenge ikomeye ituma asaba ko iyo cyamunara iteshwa agaciro; ii. Hashingiwe ku bihe byariho by'icyorezo cya Covid-19, bigahuzwa n'igihe Bimenyimana Innocent avuga ko cyamunara yabereye, bigaragaza ko nta bikorwa byari byemewe kuko abantu bari muri gahunda ya guma mu rugo, ntawemerewe kurenga intara,

Page 8

nk'uko icyemezo cy'Inama yAbaminisitiri yateranye ku wa 18/05/2020 kibigaragaza⁶⁶, ndeste n'Amabwiriza y'Urugaga rw'Abahesha b'Inkiko yo ku wa 16/03/2020; iii. Bimenyimana Innocent atigeze amenyesha Ndererimana Gédéon raporo y'igenagaciro ngo nataryishimira asabe ko hakorwa igenagaciro rihinyuza; iv. Raporo ya cyamunara itagaragaza abayitabiriye ndetse n'abayisinyeho cyangwa ngo igaragaze ibiciro batanze;

- v. Hashingiwe ku kuba itangazo rimenyesha umunsi wa cyamunara ryarageze ku Biro by'Akagari ka Karwasa ku wa 20/05/2020, cyamunara ikaba ku wa 26/05/2020, usanga iminsi 5 iteganywa n'amategeko kugira ngo cyamunara ibe itarubahirijwe. [22] Bavuga ko indi nenge ari ukunyuranya kw'amatariki agaragara muri raporo y'umugenagaciro kuko igaragaza ko yakozwe na Muhire Serge Pacifique ku wa 25/11/2019, mu gihe icyemezo gihamya ubushobozi bwe cyari gifite agaciro kuva ku itariki ya 01/01/2020 kugeza ku ya 31/12/2020. Bavuga kandi ko Bimenyimana Innocent yari azi aho Ndererimana Gédéon atuye, akaba ataramubuza ngo amumenyeshe aho kwiyandikira ubwe ku nyandiko, ko kandi atigeze anamenshyesha UNIVERSAL TRADING Ltd yishyurizaga. Bavuga ko ikindi banenga cyamunara ari uko yabaye ku wa 26/05/2020, mu gihe kashe mpuruzwa igaragara ku rubanza rurangizwa yateweho mu mwaka wa 2021. [23] Basaza kuri iyi ngingo bavuga ko bashingiye kuri e-mail yo ku wa 10/05/2022, basanga cyamunara yakorewe ku mutungo ufite UPI:4/03/03/04/3678 yaramenyeshejwe Ndererimana Gédéon nyuma y'uko ikozwe, bagasaba Urukiko ko rwategeka ko iteshejwe agaciro kuko itubahirije ibiteganywa n'amategeko, maze agasubizwa umutungo we, cyane cyane ko yari yatangiye kurangiza urubanza ku neza. [24] Bimenyimana Innocent na Me Ndayishimiye Jean Paul umwunganira bavuga ko cyamunara yabaye itateshwa agaciro kuko kuwa Ndererimana Gédéon atarigeze arangiza ku bushake urubanza RCOM 00335/2019/TC rwaciwe ku wa 29/04/2019 rwagombaga kurangizwa ku gahato. Bimenyimana Innocent avuga ko yakozwe ibiteganywa n'amategeko byose kuko yatanze inyandiko isaba ugomba kwishyura kugaragaza umutungo ugomba gufatirwa ku wa 02/07/2019, agasaba gihamya y'uwanditse ku butaka mu Kigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda ku wa 16/08/2019, akora inyandiko y'ifatirabwishyu imenyeshwa Ndererimana Gédéon ku wa 23/09/2019. Avuga ko hakozwe kandi n'inyandiko y'itambamiramutungo. Avuga ko yasabye Umugenagaciro mu rugaga rw'abagenagaciro ku wa 04/11/2019, Ndererimana Gédéon amenyeshwa raporo y'igenagaciro ku wa 25/02/2020. Avuga kandi ko itangazo rya cyamunara ryakozwe ku wa 15/05/2020, risinyishwa ku Biro by'Akagari ka Karwasa ku wa 20/05/2020. [25] Basobanura ko inenge z'ukunyuranya kw'itariki igaragara kuri raporo y'umugenagaciro ndetse n'itariki igaragara ku cyemezo

gihamya imirimo ye (real property valuers annual practicing certificate) itahabwa agaciro kuko icyabaye ari ikosa

6 Intangazo ry'ibyemezo by'Abaminisitiri yo ku wa 18/05/2020. [...] serivise zemerewe gukomeza gukora: ... c. ingendo zemewe gusa hagati mu Ntara. Ingendo hagati y'Intara zitandukanye cyangwa Intara n'Umujyi wa Kigali zirabujijwe, ariko zizasubukurwa ku itariki ya 01 Kamena 2020.

Page 9

ry'imyandikire (erreur de frappe). Naho kashe mpuruza igaragara ku rubanza rwarangijwe, bavuga ko yateweho mu buryo bw'ikoranabuhanga, icyakora ko atari ko byahoze kuko mbere yaterwagaho mu buryo bw'intoki busanzwe. [26] Bavuga ko hashingiwe ku Itegeko N°12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'abahesha b'inkiko, Bimenyimana Innocent yari afite ububasha bwo gukora inyandiko zose zagarutswaho, bityo ko utazemera yari kuziregera, kandi ibyo bikaba ntabyabaye. Basobanura ko inyandiko zose zamenyeshejwe Ndererimana Gédéon kuko mbere y'uko yandika ibyo bavuganye kuri buri nyandiko, yabanzaga kumuhamagara kuri telefoni ye. Icyakora avuga ko kugeza ubu atabona ibimenyetso bigaragaza ko bavuganaga kuko hashize gihe kirekire. [27] Ku bijyanye n'ibivugwa na Ndererimana Gédéon ko cyamunara itabayeho kubera ibihe twarimo bya "guma mu rugo", bavuga ko kuba imirimo yari yemerewe gukorerwa hagati mu Ntara, ntacyari kumubaza gukoresha iyo cyamunara. Bongeraho kandi ko atakwitwaza ko hari igice kimwe cyakumiriwe kwitabira cyamunara kuko igihe cyamunara yakorewe hatari hagatangira uburyo bw'ikoranabuhanga, hakiyongeraho no kuba batagaragaza niba hari abashatse kwitabira cyamunara ngo noneho bazitirwe na Covid-19. [28] Ku bijyanye n'inenge Ndererimana Gédéon n'umwunganira bavuga ko raporo ya cyamunara itagaragaza amakuru yose, bavuga ko ibivugwa atari ukuri kuko kuba hari amakuru atagaragara muri raporo ya cyamunara, byatewe n'uko system byagombaga kuzuzwamo yari itaratangira gukora nk'uko byateganywaga n'ingingo ya 266 y'Itegeko N 22/2018 ryo ku wa 29/04/2018 ryagarutswaho, ko ibyanditswe muri iyo raporo ya cyamunara hakoreshejwe form itangwa n'Urugaga rw'Abahesha b'inkiko b'umwuga, bakavuga ko ntacyo yahinduyeho ndetse nta n'icyo yongeyeho, uretse kuyuzuzwa gusa. Bavuga ko kuba Uwambayinema Anne atarasinye ari ikibazo cyo kwibeshya no kwibagirwa kandi ibyo bisanzwe bibaho. [29] Me Ndayishimiye Jean Paul wunganira Bimenyimana Innocent asoza avuga ko inyandiko zose zakozwe n'uwo yunganira zakorewe ku gihe ndetse zinamenyeshwa Ndererimana Gédéon mu buryo bukurikije amategeko kuko harimo n'inyandiko ubwe atashoboraga kubona, nk'inyandiko ihamya uwanditse ku mutungo utezwa cyamunara. [30] Me Gahutu Joseph uhagarariye Uwambayinema Anne wagobotse ku bushake avuga ko yaguze umutungo uburanwa muri cyamunara harangizwa urubanza RCOM 00335/2019/TC rwaciwe ku wa 29/04/2019 ndetse inyandiko zose zakozwe na Bimenyimana Innocent zamenyeshejwe uwagombaga kwishyura mu buryo bukurikije amategeko, bityo kuba Ndererimana Gédéon atemera agaciro kazo ntacyo byamumarira kuko yagombaga kuba yaraziregeye. Avuga ko imihango yose ibanziriza cyamunara yubahirijwe, uwaguze muri cyamunara akaba yaraguze mu buryo bukurikije amategeko kandi ubutaka yabwanditsweho we n'umugabo we Tuyiringire Joseph bikozwe n'Ikigo gishinzwe ubutaka. Arangiza asaba ko

cyamunara ikwiye kugumana agaciro kayo kubera ko yakozwe mu buryo bukurikije amategeko. - Ibijyanye n'ibikorwa byongewe ku mutungo ufite UPI:4/03/03/04/3678 n'amafaranga yishyuye uwo mutungo ugurwa muri cyamunara

Page 10

[31] Me Gahutu Joseph uhagarariye Uwambayinema Anne asobanura ko ikibanza yaguze muri cyamunara cyari urutare ariko nyuma kiza gusizwa kiraringanira ndetse bakizengurutse n'uruzitiro rw'amatafari ahiye, ko ibikorwa byakozwe bifite agaciro ka 9.984.679 Frw habariwemo agaciro k'ubutaka nk'uko bigaragazwa n'igenagaciro yashyikirije Urukiko, agasaba ko mu gihe cyamunara yateshwa agaciro Ndererimana Gédéon yamusubiza amafaranga yakoreshejwe haringanizwa icyo kibanza, naho Bimenyimana Innocent we agategekwa gusubiza 300.000 Frw Uwambayinema Anne yishyuye muri cyamunara. [32] Ndererimana Gédéon na Me Munyentwari Charles umwunganira bavuga ko igenagaciro ryatanzwe na Uwambayinema Anne rigaragaramo gukabya kuko igenagaciro rihinyuza bakoze rigaragaza ko ibikorwa byakozwe bifite agaciro ka 4.903.6118Frw habariwemo n'ak'ubutaka. Bavuga ko Uwambayinema Anne yubatswe nta n'uburenganzira ahawe bwo kubaka (autorisation de bâtir) kandi yabikoze imanza zari zaratangiyeye, ndetse n'amabuye yakoresheje yubaka fondasiyo (fondation) ari ayo yasanze mu kibanza. Bavuga kandi ko mu gihe cyamunara yateshwa agaciro, Uwambayinema Anne yakuraho ibyo yubatswe kuko we atabikeneye, ibindi bikirengerwa na Bimenyimana Innocent kuko ari we ufite amakosa kuko yakozwe ibitubahirije amategeko. [33] Bimenyimana Innocent na Me Ndayishimiye Jean Paul umwunganira bavuga ko raporo z'igenagaciro zatanzwe n'ababuranyi zigaragaza kuvuguruzanya ndetse n'ubuso bw'ubutaka butandukanye, akaba asaba ko Urukiko rwakwishyiriraho umugenagaciro akaba ari we ugagaragaza agaciro n'ubuso nyakuri. Basaba bavuga ko basanga ibyongewe ku butaka byakwishyurwa na Ndererimana Gédéon mu rwego rwo kwirinda kwikungahaza, ariko ko bemera ko Bimenyimana Innocent ari we wasubiza Uwambayinema Anne 300.000Frw yishyuye agura umutungo muri cyamunara kuko ari we wayakiriye. UKO URUKIKO RUBIBONA [34] Ababuranyi ntibumvikana ku bijyanye na cyamunara yakozwe, kuko Ndererimana Gédéon avuga ko itubahirije ibiteganywa n'amategeko agasaba ko iteshwa agaciro, mu gihe Bimenyimana Innocent we avuga ko yubahirije ibiteganywa n'amategeko byose. Urukiko rwasuzumye ibigomba gukorwa kugira ngo cyamunara ikorwe mu buryo bwubahirije amategeko, rureba niba iyo Bimenyimana Innocent yakozwe ku mutungo wa Ndererimana Gédéon yarabyubahirije. Hanasuzumwe ibijyanye n'agaciro k'ibyakozwe ku butaka bwaguzwe na Uwambayinema Anne, n'amafaranga yishyuye muri cyamunara abugura mu gihe cyamunara yateshwa agaciro, bikaba ngombwa ko asubiza umutungo yaguze. -Ku bijyanye na cyamunara [35] Ingingo ya 260 y'Itegeko N 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, mu gika cyayo cya mbere n'icya kabiri iteganywa ko : "Umuntu wese ubifitemo inyungu ashobora gusaba Urukiko rw'Ibanze rw'aho cyamunara igomba kubera kuyihagarika iyo: 1° hatubahirijwe amategeko agenga ishingana, ifatira n'itangazwa

Page 11

rya cyamunara; 2° umutungo ugomba kugurishwa udashobora kugurishwa kubera ubukene bwa nyirawo nk'uko biteganywa mu ngingo ya 259 y'iri tegeko; 3° hari ikimenyetso kidashidikanywaho kigaragaza ko umutungo ugiye kugurishwa atari uw'uryozwa kwishyura. Izi mpamvu ni nazo zishingirwaho mu kirego gisaba guteshwa agaciro cyamunara yakozwe.” [36] Ingingo ya 253 y'iryo Tegeko iteganya ko: “Mu gihe cy'amasaha mirongo ine n'umunani (48) kuva Umuhesha w'Inkiko yemeje igiciro cy'umutungo ugomba kugurishwa, akora itangazo rya cyamunara rigaragaza umutungo ugomba gutezwa cyamunara, umwirondoro wa nyirawo, umwirondoro w'ugomba kwishyurwa, impamvu ya cyamunara, aho umutungo uherereye, itariki cyamunara izaberaho n'isaha izatangiriraho. Itangazo rya cyamunara rishyirwa ku rubuga rw'imanza zirangizwa, hariho ifoto y'umutungo ugurishwa n'icyemezo gihamya (ko) nyir'umutungo. Rigomba kandi gushyikirizwa nyir'umutungo ugurishwa, ugomba kwishyurwa, Umunyamabanga Nshingwabikorwa w'Akagari k'aho umutungo uherereye, rikanatangazwa kuri Radio cyangwa Televiziyo n'ikinyamakuru cyandika bikorera mu Rwanda. Iyo ari umutungo utimukanwa itangazo rya cyamunara rimaniywe ku Biro by'Akagari k'aho uwo mutungo uherereye. Ibintu byafatiriwe ntibishobora kugurishwa muri cyamunara mbere y'iminsi itanu (5) cyamunara itangajwe”. [37] Mu byo ingingo z'amategeko zimaze kuvugwa zigaragaza, harimo ko cyamunara ishobora gusabirwa guteshwa agaciro igihe hatatanze amatangazo mu gihe giteganywa kandi bikamenyeshwa abo bireba bose, igihe hatubahirijwe amategeko agenga ishingana n'ifatira, n'igihe yakozwe hatubahirijwe ibihe biteganywa. [38] Ku bijyanye n'itangazo rya cyamunara rivugwa muri uru rubanza, dosiye igaragaza ko hariho itangazo ryo ku wa 15/05/2020 ryashyizweho umukono n'Umunyamabanga Nshingwabikorwa w'Akagari ka Karwasa ku wa 20/05/2020, ariko riragaragaza inenge zikurikira:

- a) Nta cyerekana ko ryameneshejwe Ndererimana Gédéon na Universal Trading Ltd;
- b) Nta kigaragaza ko ryacishijwe mu gitangazamakuru icyo ari cyo cyose haba radiyo, televiziyo cyangwa ikinyamakuru cyandika bikorera mu Rwanda;
- c) Ryakozwe igihe cy'amasaha 48 ateganywa mu ngingo ya 253 y'Itegeko ryavuzwe haruguru cyararenze, kuko raporo y'igiciro cy'umutungo ugomba kugurishwa Bimenyimana Innocent avuga ko yayimenyekanishije ku wa 25/02/2020, ariko itangazo rigakorwa ku wa 15/05/2020, kandi rimenyeshwa Umuyobozi w'Akagari ku wa 20/05/2024. [39] Urukiko rurasanga kuba itangazo rya cyamunara ritarubahirije igihe rigomba gukorerwamo, ntiramenyeshwe nyir'umutungo utezwa cyamunara n'uwishyurizwa, ndetse ntiratangazwe mu gitangazamakuru icyo ari cyo cyose, iyo ari inenge ikomeye ituma cyamunara igomba guteshwa agaciro nk'uko biteganywa n'ingingo ya 260 y'Itegeko N 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, bityo Urukiko rukaba rusanga atari ngombwa gusuzuma izindi mpamvu Ndererimana Gédéon atanga anenga iyo cyamunara.

Page 12

[40] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga cyamunara yakozwe ku mutungo wa Ndererimana Gédéon ufite UPI 4/03/03/04/3678 ku wa 28/05/2020 itarubahirije ibiteganywa n'amategeko, bityo ikaba igomba guteshwa agaciro Ndererimana Gédéon agasubizwa umutungo we. [41] Urukiko rurasanga kandi kubera ko cyamunara iteshejwe agaciro, n'icya ngombwa cy'ubutaka gifite UPI: 4/03/03/04/3678 cyanditswe kuri Tuyiringire Joseph na Uwambayinema Anne kigomba guteshwa agaciro, umutungo ukandikwa kuri Ndererimana Gédéon. -Ku bijyanye n'ibikorwa byongewe ku mutungo ufite UPI :4/03/03/04/3678 n'amafaranga yishyuwe uwo mutungo ugurwa muri cyamunara [42] Nk'uko byasobanuwe haruguru, cyamunara yakozwe ku wa 28/05/2020 ku mutungo wa Ndererimana Gédéon ufite UPI: 4/03/03/04/3678 yakozwe mu buryo bunyuranyije n'amategeko, Urukiko rukaba rwasanze igomba guteshwa agaciro, Ndererimana Gédéon agasubizwa umutungo we, hamaze gusuzumwa niba hari ibyo uwawuguze yawukozeho agomba kubanza gusubizwa. [43] Urukiko rurasanga ibyo Uwambayinema Anne avuga yakoze ku butaka buburanwa ari inyubako nshya zigizwe n'uruzitiro (clôture/fence), ndetse na fondasiyo igaragara muri uwo mutungo hagati, umugenagaciro washyizweho n'Urukiko akaba yatanze raporo igaragaza ibi bikurikira:

- a. Ubutaka buburanwa bufite ubuso bwa 256,27 sqm;
- b. Agaciro k'ubutaka: 3.840.000 Frw;
- c. Fondasiyo iri mu kibanza hagati : 595.018Frw ;
- d. Urugo (fence): 1.080.818 Frw habariwemo fondasiyo yubatseho urugo, yose hamwe: 5.515.836 Frw [44] Ikigo cy'Ubutaka na cyo cyatanze raporo ikosora imbibi z'ubutaka igaragaza ko buherereye mu Karere ka Musanze, Umurenge wa Gacaca, Akagari ka Karwasa, mu Mudugudu wa Karambi; inagaragaza ko ubuso bwabwo ari 270 sqm. [45] Ingingo ya 42 y'Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka iteganya mu gika cya 3 ko: "mu gihe umuntu ashize inyubako, ibihingwa n'ibindi bikorwa ku butaka bw'undi muntu hadakurikijwe ibisabwa n'amategeko cyangwa amasezerano, nyir'ubutaka afite uburenganzira bwo gusaba uwashyize inyubako cyangwa ibihingwa kuri ubwo butaka kubikuraho bitabujije no gusaba indishyi hakurikijwe amategeko abigenga". Ibi ni nabyo byari bikubiye mu gika cya 3 cy'ingingo ya 35 y'Itegeko Ngenga N 03/2013/OL ryo ku wa 16/06/2013 rikuraho Itegeko Ngenga N 08/2005 ryo ku wa 14/07/2005 rigenga imikoreshereze n'imicungire y'ubutaka mu Rwanda7.

7 Iyo ngingo yateganyaga ko: « mu gihe inyubako cyangwa se ibihingwa byashyizwe n'undi muntu ku butaka butari ubwe, hadakurikijwe ibisabwa n'amategeko cyangwa amasezerano (procedures that are contrary to laws or agreement with land owner), nyir'ubutaka afite uburenganzira bwo gusaba uwabishyizeho kubikuraho bitabujije no gusaba impozamarira cyangwa indishyi mu gihe hari ibikorwa bye byangijwe ».

Page 13

[46] Ibijyanye n'uko bigenda ku nyubako nshya zashyizwe ku butaka bugomba gusubizwa nyirabwo w'ukuri byasobanuwe n'Urukiko mu rubanza Nishimwe n'undi yaburanaga na Mugenga n'undi. Urukiko rushingiye ku ngingo ya 35 y'Itegeko Ngenga N 03/2013/OL ryo ku wa 16/06/2013 ryavuzwe haruguru no ku bisobanuro by'abahanga mu mategeko, rwasobanuye ko mu gihe inyubako nshya cyangwa ibihingwa byashyizwe ku butaka bw'undi mu buryo budakurikije amategeko, nyir'ubutaka afite uburenganzira bwo gusaba ko uwabishyizeho abikuraho. Urukiko rwasobanuye ko bifatwa ko byashyizweho mu buryo budakurikije amategeko igihe umuntu yashyize inyubako nshya ku butaka yaguze n'utari nyirabwo, azi neza ko uwo baguze atari nyirabwo, kuko kugurisha umutungo w'undi ari uguhungabanya uburenganzira awufiteho⁸. [47] Cyakora, igihe inyubako zashyizweho ariko ubikoze yumva ko azishyize ku butaka bwe, Urukiko rw'Ikirenga rwabigarutseho mu rubanza Harerimana n'abandi yaburanaga na Sebukayire⁹, aho rwavuze ko n'ubwo ingingo ya 35, igika cya 3, y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 ryavuzwe haruguru iteganya ko uwubatswe ku butaka bw'abandi mu buryo butemewe yasabwa gukuraho inyubako ze, ndetse no kubiryoze indishyi z'impozamarira cyangwa iz'ibyo yangije, ibyo gukuraho inyubako bitahabwa ishingiro mu gihe uwaregwaga muri urwo rubanza (Sebukayire) yafashe ubutaka kandi akabwubakaho nta buryarya, bityo inyubako zikaba zikwiye kugumanwa n'abarega, ariko bakazitangira indishyi zishingiye ku gaciro k'izo nyubako. [48] Ihimaze gusobanurwa bigaragaza ko mu gihe hari inyubako zashyizwe ku butaka bugomba gusubizwa nyirabwo, izo nyubako zishobora gusabirwa gukurwaho iyo uwazishyizeho yabikoze azi neza ko zishyizwe ku butaka yabonye mu buryo butubahirije amategeko, ariko igihe yazishyizeho yumva ko ari ubwe, ntiyategekwa kuzikuraho, ahubwo azihererwa indishyi zingana n'agaciro kazo, akazihabwa n'ugomba gusubizwa ubwo butaka. [49] Ku bijyanye n'uru rubanza, Uwambayinema Anne yaguze mu cyamunara ubutaka bwari ubwa Ndererimana Gédéon ndetse ahabwa icyangobwa cyabwo. Kuba cyamunara iteshejwe agaciro ni amakosa y'umuhesha w'inkiko Bimenyimana Innocent wayikoze mu buryo bunyuranyije n'amategeko. Nubwo rero Uwambayinema Anne agomba gusubiza ubwo butaka, ntiyategekwa gukuraho inyubako yashyizeho, kuko atabikoze mu buryo bunyuranyije n'amategeko, ahubwo yabihereye indishyi zingana n'agaciro k'izo nyubako. [50] Hagendewe kuri raporo y'umugenagaciro yagarutseho haruguru, Urukiko rurasanga Ndererimana Gédéon agomba gusubiza Uwambayinema Anne agaciro k'inyubako uyu yashyize ku butaka kangana na 1,080,818 Frw y'urugo + 595,018 Frw ya fondasiyo, yose hamwe akaba 1.675.819 Frw nk'uko kagaragajwe n'umugenagaciro washyizweho n'Urukiko.

⁸ Urubanza RCAA 00031/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25 Nzeri 2019 Nishimwe n'undi yaburanagamo na Mugenga N'UNDI, igika cya 44

⁹ Urubanza RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014 Harerimana n'abandi yaburanagamo na sebukayire, igika cya 28

Page 14

- [51] Urukiko rurasanga kandi Uwambayinema Anne agomba gusubizwa 300,000Frw yishyuye agura uwo mutungo muri cyamunara kuko bibaye ngombwa ko awusubiza, akayahabwa na Bimenyimana Innocent kuko ari we wayahawe, akaba ataranayashyikirije uwo yishyurizaga mu rubanza yarangizaga. [52] Ku bijyanye n'ibyo Ndererimana Gédéon avuga by'uko Uwambayinema Anne yatangiye kubaka imanza zaratangiye, Urukiko rurasanga nta gaciro byahabwa kubera ko atabitangiye ibimenyetso. Naho kuba yarubatse atabifitiye uburenganzira bwo kubaka, Urukiko rurasanga bitari mu bigomba gusuzumwa muri uru rubanza, kuko ikirebwa ari ukumenya niba imirimo yakozwe igomba kwishyurwa, kuko yakozwe nta buriganya.
2. ishingiro ry'indishyi n'amafaranga y'igihemo cya Avoka n'ay'ikurikiranarubanza asabwa muri uru rubanza [53] Ndererimana Gédéon na Me Munyentwari Charles umwunganira bavuga ko kuba Bimenyimana Innocent yateje cyamunara umutungo we mu buryo butubahirije amategako, byahangayikishije Ndererimana Gédéon ndetse bimutera akababaro ko kubuzwa uburenganzira ku mutungo we wamufashaga kwita ku muryango we kuko ahavaga ibibatunga bahatwaye mu buryo budakwiye, bikamutera no gusiragira mu nzego zitandukanye asaba kurenganurwa kugeza no mu Rukiko rw'Ikirenga. Basaba ko kubera izo mpamvu Bimenyimana Innocent yategewe kumuha 2.000.000Frw y'indishyi z'akababaro, 300.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka. [54] Ku birebana n'amafaranga y'indishyi Uwambayinema Anne asaba, bavuga ko atayahabwa kuko ari we wizanye mu rubanza. [55] Bimenyimana Innocent na Me Ndayishimiye Jean Paul umwunganira bavuga ko indishyi zisabwa na Ndererimana Gédéon nta shingiro ryazo kuko n'ikirego cye kidakwiye guhabwa ishingiro, ko uretse n'ibyo nta n'ibimenyetso azigaragariza. Bavuga ariko ko mu gihe Urukiko rwaramuka rusanze ari ngombwa ko azihabwa, rwazigena mu bushishozi bwari, ko kandi mu Rukiko rw'Ikirenga ari ho honyine yaburanye yunganiwe kuko mu mu zindi nkiko akaba yiburaniraga. [56] Bavuga ko Ndererimana Gédéon akomeje gusiragiza Bimenyimana Innocent no kumushora mu nkiko azira gukora umurimo wari mu nshingano ze wo kwishyuriza Universal Trading Ltd, bakaba basaba ko igihe cyamunara yaba igumanye agaciro kayo, Ndererimana Gédéon yategewe kumwishyura 500.000Frw y'igihembo cya Avoka wamuburaniye mu Rukiko rw'Ubucuruzi, 500.000Frw y'igihembo cya Avoka wamuburaniye mu Rukiko Rukuru rw'Ubucuruzi, 800.000Frw y'igihembo cya Avoka wamuburaniye mu Rukiko rw'Ikirenga na 300.000Frw y'ikurikiranarubanza. [57] Me Gahutu Joseph uhagarariye Uwambayinema Anne asaba Urukiko ko mu gihe rwasanga cyamunara igomba kugumana agaciro, rwatega Ndererimana Gédéon kumuha 500.000Frw y'indishyi z'akababaro, 300.000Frw y'ikurikiranarubanza, 200.000 Frw yo gusiragizwa mu manza na 1.000.000Frw y'igihembo cya Avoka. Avuga kandi ko igihe cyamunara yaba iteshejwe agaciro, Urukiko rwatega ko indishyi zimaze kuvugwa zitangwa na Bimenyimana Innocent.

Page 15

UKO URUKIKO RUBIBONA [58] Urukiko rurasanga Bimenyimana Innocent atsindwa no kuba yarakoze cyamunara mu buryo butubahirije amategeko bigatuma habaho imanza zo gutesha agaciro cyamunara, akaba ari we ukwiye gutanga indishyi zisabwa muri uru rubanza. [59] Ku birebana n'indishyi z'akababaro Ndererimana Gédéon asaba, Urukiko rurasanga agomba kuzihabwa kubera ko atsinze urubanza kandi akaba yaragombye kwiruka hirya no hino kugira ngo ashobore gusubirana uburenganzira ku mutungo we yari yaravukijwe. Rurasanga ariko 2.000.000 Frw asaba ari umurengera mu bushishozi bw'Urukiko akaba agenewe 1.000.000Frw. [60] Ku birebana na 1.000.000Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza Ndererimana Gédéon asaba, Urukiko rurasanga agomba kuyahabwa kuko ari mu rugero rukwiye. [61] Urukiko rurasanga indishyi Uwambayinema Anne akwiye kuzihabwa kuko na we yahungabanyijwe n'ibikorwa bya Bimenyimana Innocent wakoze cyamunara mu buryo butubahirije amategeko, bikaba bitumye cyamunara iteshwa agaciro, hanyuma akaba agomba gusubiza umutungo yari azi ko yaguze mu buryo bukurikije amategeko. Kubera iyo mpamvu, Bimenyimana Innocent agomba kubimuhara indishyi z'akababaro zingana na 500.000Frw nk'uko azisaba. [62] Ku birebana n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza, Urukiko rurasanga agomba kuyahabwa, bityo rukaba rutegetse Bimenyimana Innocent utsinzwe urubanza kumuha 1.000.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza asaba kuko ari mu rugero rukwiye. [63] Ku birebana n'indishyi zo gusiragizwa mu nkiko, Urukiko rurasanga ntazo yahabwa kubera ko ari we wasabye kugoboka kandi akaba yaraje muri uru rubanza rwonyine. III. ICYEMEZO CY'URUKIKO [64] Rwemeje ko ikirego cyatanze na Ndererimana Gédéon gisaba gutesha agaciro cyamunara yakorewe ku mutungo ubaruwe kuri UPI:4/03/03/04/3678 gifite ishingiro; [65] Rwemeje ko cyamunara yakorewe ku mutungo wa Ndererimana Gédéon ubaruwe kuri UPI: 4/03/03/04/3678 iteshejwe agaciro; [66] Rwemeje ko icyangombwa cy'ubutaka gifite UPI: 4/03/03/04/3678 cyanditswe kuri Tuyiringire Joseph na Uwambayinema Anne giteshejwe agaciro; [67] Rwemeje ko Ndererimana Gédéon asubirana umutungo we ubaruye kuri UPI: 4/03/03/04/3678 ukamwandikwaho;

Page 16

[68] Rutegetse Bimenyimana Innocent gusubiza Uwambayinema Anne 300.000Frw yishyuye agura mu cyamunara umutungo ubaruye kuri UPI: 4/03/03/04/3678; [69] Rutegetse Ndererimana Gédéon gusubiza Uwambayinema Anne 1.665.819Frw y'ibikorwa uyu yari yarashyize mu kibanza asubiranye; [70] Rutegetse Bimenyimana Innocent guha Ndererimana Gédéon 2.300.000Frw akubiyemo indishyi z'akababaro, igihembo cya Avoka n'ikurikiranarubanza; [71] Rutegetse Bimenyimana Innocent guha Uwambayinema Anne 1.800.000Frw akubiyemo indishyi z'akababaro, igihembo cya Avoka n'amafaranga y'ikurikiranarubanza.

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