

RWANDA / JUDGMENT

KABANGO V. MUKAMUSANA N'UNDI

RCOM 0002/15/CS

COURT

Supreme Court

DECIDED

13 March 2015

CASE / FILE NUMBER

RCOM 0002/15/CS

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KABANGO V. MUKAMUSANA N'UNDI

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- Date: 2015-03-13
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Text

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KABANGO V. MUKAMUSANA N'UNDI [Rwanda URUKIKO RW'IKIRENGA –RCOM 0002/15/CS – (Mukanyundo , P.J., Gatete na Rugabirwa , J.) 13 Werurwe 2015] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ibirego byihutirwa – Ifatwa ry'ibyemezo ku birego byihutirwa – Umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihuta, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo –Isuzumwa ry'urubanza rw'iremezo mu mizi yarwo – Urubanza rw'iremezo mu mizi yarwo ruzuzumwa n'intego y'abacyamanza baburanisha urubanza mu mizi– Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi,ingingo ya 320. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ibirego byihutirwa –Icyemezo ku kirego cyihutirwa gifashwe ku rwego rwa mbere kiba ari icy'agateganyo,kikavanwaho n'icibwa ry'urubanza mu mizi – Iyo urubanza mu mizi rujuririwe nta kibaza umuburanyi gutanga ikindi kirego cyihutirwa ashingiye ku rubanza rw'iremezo– Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi,ingingo ya 316. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gutambamira urubanza rwaciwe – Gutambamira urubanza rwaciwe

ntibihagarika irangiza ryarwo – Guhagarika irangiza ry’urubanza – Iyo Urukiko rwagaragarijwe n’uwatambamiye irangizwa ry’urubanza ko ruramutse rurangijwe byamutera igihombo gikabije narwo rugasanga aribyo rurarihagarika – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 180(4). Amategeko y’imiburanishirize y’imanza z’ubucuruzi – Indishyi – Kuregera indishyi hamwe n’amafaranga umuburanyi yakoresheje ku kirego cyihutirwa – Kuregera indishyi hamwe n’amafaranga umuburanyi yakoresheje ku kirego cyihutirwa biregerwa hamwe n’ikirego cy’iremezo – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 320(4). Incamake y’ikibazo: Mbanda Chantal yasheshe amasezerano y’ubukode bw’inzu yo gucururizamo yari afitanye na Mukamusana Henriette, uyu nawe akaba yarakodeshaga igice cy’iyo nzu uwitwa Runanira A André. Bimaze kuba Mukamusana yahise arega Mbanda mu Rukiko rw’Ubucuruzi rwa Musanze avuga ko atubahirije amasezerano y’ubukode bagiranye. Urukiko rwategetse Mbanda gusubiza Mukamusana 8.760.000 Frw y’ibikorwa bigizwe n’iyo nyubako kwishyura ahwanye n’amezi yari asigaye kugira ngo amasezerano y’ubukode arangire, hiyongereyeho indishyi z’akababaro n’igihembo cya avoka runamutegeka gusubiza urega amafaranga y’ingwate yatanze, Urukiko rwanategetse Mukamusana gukura mu kibanza cya Mbanda ibikoreshe bya mu gihe cy’ukwezi. Mbanda na Mukamusana bajuririye mu Rukiko Rukuru rw’Ubucuruzi kuri RCOMA 0371/14/HCC-0388/14/HCC, Runanira arugobokamo. Urukiko rwemeje ko ubujurire bwatanze na Mbanda nta shingiro bufite, rumutegeka guha Mukamusana 10.000.000 Frw y’inyungu yagombaga kubona mu gihe cy’amezi 26 yari asigaye kugira ngo ayo masezerano arangire yiyongera kuyo yahawe mbere, hakiyongeraho ay’ikurikiranarubanza n’igihembo cya Avoka yo mu rwego rw’ubujurire, runamutegeka guha Runanira 2.227.000 Frw ahwanye n’ibikorwa by’amazi n’umurimo yashyize mu nzu ye, 1.000.000 Frw y’igihombo azaterwa no kutagira aho akorera, 500.000 Frw akubiyemo indishyi zo gushorwa mu manza ku maherere, ay’ikurikiranarubanza n’igihembo cya Avoka nayingwate y’amagarama yatanze arega.

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Kabango Mumporeze Bernadette yatambamiye urwo rubanza mu rukiko rukuru rw’ubucuruzi kuri RCOMA 0576/14/HCC. Mu gihe urwo rubanza rutaracibwa, atanga ikirego cyihutirwa kuri RCOMA 0605/14/HCC asaba ko urubanza yatambamiye rutarangizwa kugeza igihe ikirego cye cy’itambamirarubanza giciriwe burundu. Urwo Rukiko rwemeje ko ikirego cyihutirwa cyatanze na Kabango kidafite ishingiro kubera ko ibyangombwa by’inzu yatanze bigaragaza ko nta ruhare Mbanda afite ku nzu asaba ko itagurishwa kuko yanditse kuri Kabango n’umugabo we, ko kandi nta ndishyi zigomba gutangwa muri urwo rubanza, ko ahubwo zizasabwa mu kirego cy’iremezo. Urwo Rukiko rwaciye urubanza RCOMA 0576/14/HCC, rwemeza ko ikirego cyatanze na Kabango kitakiriwe kubera ko nta nyungu afite mu rubanza yatambamiye kuko ntacyo ruzamurenganyaho bitewe nuko icyaburanwe mu rubanza yatambamiye atari inzu, ko ahubwo ari amasezerano y’ubukode Mbanda atubahirije bituma acibwa indishyi. Kabango yajuriye mu Rukiko rw’Ikirenga kuri RCOMAA 0011/15/CS. Anatanga ikirego cyihutirwa kuri RCOM 0002/15/CS asaba ko irangiza ry’urubanza RCOMA 0371/14/HCC- 0388/14/HCC yatambamiye ryahagarikwa

kugeza igihe Urukiko rw'Ikirenga ruzacira urubanza kubera ko urwo rubanza ruramutse rurangijwe byamutera igihombo gikabije kandi kidasubirwaho, Mukamusana yasubije ko iryo tambamira rigamije gusa gutinza irangiza ry'urubanza kuko inzu isabirwa gutagurishwa yarangije kugurishwa, Mbanda nawe avuga ko Urukiko rw'Ikirenga rukwiye guhagarika irangiza ry'urubanza RCOMA 0371/14/HCC- 0388/14/HCC kugira ngo umutungo wa Kabango n'umugabo we utagurishwa muri cyamunara, naho Runamira wagobotse muri runo rubanza, yavuze ko irangiza ry'urubanza rikozwe ritagira ingaruka mu mutungo wa Mbanda kuko nta kimenyetso cyatanze kigaragaza yuko asangiye umutungo na Kabango. Mukamusana nawe yahise atanga inzitizi zo kutakira ikirego cyihutirwa kubera ko ubujurire bw'iremezo butari mu bubasha bwari kubera yuko nta ndishyi zingana na 50.000.000 Frw zagenwe mu rubanza RCOMA 0371/14/HCC-0388/14/HCC, n'urubanza RCOMA 0605/14/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku kirego cyihutirwa rukaba rwabaye itegeko bitewe nuko rutigeze rujuririrwa yanzuye asaba indishyi zikurikira rubanza, igihembo cya avoka hamwe n'indishyi z'igihe yatakaje kubera gushorwa mu manza, Runanira nawe yasabye 500.000FRW z'indishyi kubera gushorwa mu manza ku maherere, Kabango hamwe na Mbanda basobanuye ko Mukamusana na Runanira badakwiye guhabwa indishyi basaba mu rubanza rwerekeranye n'ikirego cyihutirwa, ko ahubwo bazazisaba igihe bazaburana urubanza mu mizi. Kabango yasobanuye ko ikirego cyihutirwa gikwiye kwakirwa kubera ko ubujurire bw'iremezo yatanze muri uru Rukiko buzakirwa n'umucamanza uzaburanisha urubanza mu mizi hashingiwe ku ngingo ya 28, 2° y'Itegeko Ngenga ryavuzwe haruguru kuko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza yatambamiye rushingiye ku itegeko ritariho bitewe nuko rwaciye urubanza rushingiye ku ngingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano riterekeranye n'ikiburanwa, ko ahubwo rwagombaga gushingira ku Itegeko Ngenga n° 08/2005 ryo kuwa 14/07/2005 rigenga imikoreshereze n'imicungire y'ubutaka mu Rwanda nk'uko ryahinduwe n'Itegeko Ngenga ryo mu mwaka wa 2012 kubera ko ari ryo rihuje n'icyaburanwaga kijyanye n'uburenganzira Mukamusana afite ku bikorwa by'ubwubatsi yakoreye ku butaka bwa Kabango bidaafite aho bihuriye n'amasezerano y'ubukode bagiranye yavuzwe haruguru, ko rero ububasha bw'Urukiko rw'Ikirenga butashingiye ku gaciro k'ikiburanwa, naho kuvuga yuko Urubanza RCOMA 0605/14/HCC rwabaye itegeko kuko rutigeze rujuririrwa, yasobanuye ko rutabaye itegeko, ko ahubwo ari icyemezo cy'agateganyo cyavanyweho n'icibwa ry'urubanza RCOMA 0576/14/HCC mu mizi, yasobanuye ko atajuririyeho icyemezo cyafashwe n'Urukiko Rukuru

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rw'Ubucuruzi ku kirego cyihutirwa kuko urubanza yatambamiye rwahise rucibwa mu mizi mu gihe gito, Naho Mbanda we yasubije ko ikirego cyihutirwa gikwiye kwakirwa kubera ko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwatambamiye hashingiwe ku itegeko ritajyanye n'ikiburanwa bisa nk'aho urwo rubanza rwaciye hashingiwe ku itegeko ritariho, anasobanura yuko ntaho kina kirego kidahuye nicyatanze mu Rukiko Rukuru rw'Ubucuruzi cyavanyweho n'icibwa ry'urubanza mu mizi. Runanira wagobotse muri runo rubanza asobanura yuko umucamanza uburanisha ibirego byihutirwa agomba kubanza gusuzuma niba ikirego yashyikirijwe kiri mu bubasha bwe, yasobanuye yuko ikirego cyatanze kitagakombye kwakirwa

kubera ko urubanza RCOMA 0605/14/HCC rwagombaga kujuririrwa mu gihe giteganijwe n'itegeko. Incamake y'icyemezo: 1. Umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihuta, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo byongeyeho Umucamanza uburanisha ibirego byihutirwa ntashinzwe kubanza gusuzuma niba ikirego cy'iremezo kiri mu bubasha cyangwa kitari mu bubasha bw'urukiko rwaregewe ikirego cyihutirwa. bityo urubanza rwaciye hashingiwe ku itegeko ritariho ntigishobora gusuzumwa n'Umucamanza uburanisha ibirego byihutirwa, ahubwo gisuzumwa n'Inteko y'Abacamanza bazaburanisha urubanza mu mizi.

2. Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihuta gishyikirizwa umucamanza ushinze kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara. Bityo kuba Kabango yatanze ikirego cy'iremezo kikandikwa kuri n° RCOMAA 0011/15/CS, nta kimubuza gutanga ikirego cyihutirwa ashingiye ku kirego cy'iremezo asaba guhagarikisha irangiza ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC yumva rimubangamiye mu gihe ikirego cy'iremezo kitaraburanishwa.
3. Gutambamira urubanza rwaciye ntibihagarika irangiza ryarwo, keretse iyo rihagaritswe n'urukiko rwaregewe, bisabwe n'umuburanyi, bityo irangiza ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC rigomba guhagarara kugeza igihe urubanza RCOMAA 0011/15/CS ruzacibwa burundu kubera ko riramutse ribaye byatera Kabango igihombo gikabije mu gihe bigaragaye ko yari afatanyije inzu yakodeshwaga na Mbanda.
4. Indishyi n'ibindi bijyanye n'amafaranga umuburanyi yakoresheje mu rubanza ku kirego cyihutirwa biregerwa hamwe n'ikirego cy'iremezo, bisobanura yuko nubwo urubanza rwatambiwe Mukamusana hamwe na Runanira bari batsinze ntabwo Kabango agomba kuzibaha ahubwo bashobora kongera kuzazisaba igihe cy'iburanisha ry'urubanza mu mizi. Ikirego cyihutirwa gifite ishingiro; Irangiza ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC rirahagaze; Nta ndishyi zigomba gutangwa; Amagarama y'urubanza aherereye kubarezwe. Amategeko yashingiweho: Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 180(4) 316, 320, 320(4)

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Nta manza zashingiweho. Urubanza IMITERERE Y'URUBANZA [1] Mbanda Chantal, nyir'inzu, yagiranye amasezerano y'ubukode bw'inzu yo gucururizamo na Mukamusana Henriette, uyu nawe akaba yarakodesheje igice cy'iyi nzu uwitwa Runanira André. Nyuma yaho Mbanda Chantal yasheshe ayo masezerano kubera ko Mukamusana Henriette atishyuraga amafaranga y'ubukode. [2] Mukamusana Henriette yareze Mbanda Chantal mu Rukiko rw'Ubucuruzi rwa Musanze avuga ko atubahirije amasezerano y'ubukode bagiranye kuwa 01/12/2011, Urukiko ruca urubanza rutegeka Mbanda Chantal guha Mukamusana Henriette 8.760.000 Frw y'ibikorwa bigizwe n'inyubako ya za « annexes », kuvugurura no guhindura « Buanderie » hamwe ba Butike,

8.000.000 Frw ahwanye n'amezi yari asigaje kugira ngo amasezerano y'ubukode arangire, 1.000.000 Frw y'indishyi z'akababaro, 354.000 Frw y'igihembo cya Avoka na 4.000 Frw y'ingwate y'amagarama urega yatanze, runategeka Mukamusana Henriette gukura mu kibanza cya Mbanda Chantal ibikoreshe bya mu gihe cy'ukwezi. [3] Mbanda Chantal na Mukamusana Henriette bajuririyeye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi kuri RCOMA 0371/14/HCC-0388/14/HCC, naho Runanira André arugobokamo. Urukiko rwaciye urubanza, rwemeza ko ubujurire bwatanzwe na Mbanda Chantal nta shingiro bufite, rutegeka Mbanda Chantal guha Mukamusana Henriette 10.000.000 Frw y'inyungu yagombaga kubona muri « Bar », « alimentation » n'ibumba yakodeshaga mu gihe cy'amezi 26 yari asigaye kugira ngo ayo masezerano arangire yiyongera kuri 8.000.000 Frw yahawe mbere, 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka yo mu rwego rw'ubujurire, runategeka Mbanda Chantal guha Runanira André 2.227.000 Frw ahwanye n'ibikorwa by'amazi n'umuriro yashyize mu nzu ye, 1.000.000 Frw y'igihombo azaterwa no kutagira aho akorera, 500.000 Frw akubiyemo indishyi zo gushorwa mu manza ku maherere, ay'ikurikiranarubanza n'igihembo cya Avoka na 75.000 Frw y'ingwate y'amagarama yatanze arega. [4] Kabango Mumporeze Bernadette yatambamiye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi kuri RCOMA 0576/14/HCC. Mu gihe urwo rubanza rutaracibwa, Kabango Mumporeze Bernadette yatanze ikirego cyihutirwa kuri RCOMA 0605/14/HCC asaba ko urubanza yatambamiye RCOMA 0371/14/HCC-0388/14/HCC rutarangizwa kugeza igihe ikirego cye cy'itambamirarubanza giciriwe burundu. Urwo Rukiko rwaciye urubanza RCOMA 0605/14/HCC kuwa 15/12/2014, rwemeza ko ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette nta shingiro gifite kuko impamvu ashingiraho asaba guhagarika irangizwa ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC nta shingiro zifite kubera ko ibyangombwa by'inzu yatanze bigaragaza ko nta ruhare Mbanda Chantal afite ku nzu asaba ko itagurishwa kuko yanditse kuri Kabango Mumporeze Bernadette n'umugabo we, ko kandi nta ndishyi zigomba gutangwa muri urwo rubanza, ko ahubwo zizasabwa mu kirego cy'iremezo. [5] Urwo Rukiko rwaciye urubanza RCOMA 0576/14/HCC kuwa 13/01/2015, rwemeza ko ikirego cyatanzwe na Kabango Mumporeze Bernadette kitakiriwe kubera ko nta nyungu afite mu rubanza yatambamiye kuko ntacyo ruzamurenganyaho bitewe nuko icyaburanwe

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mu rubanza yatambamiye atari inzu, ko ahubwo ari amasezerano y'ubukode Mbanda Chantal atubahirije bituma acibwa indishyi. [6] Kabango Mumporeze Bernadette yajuririyeye urubanza RCOMA 0576/14/HCC mu Rukiko rw'Ikirenga kuri RCOMAA 0011/15/CS. Yatanze kandi ikirego cyihutirwa kuri RCOM 0002/15/CS asaba ko irangiza ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC yatambamiye ryahagarikwa kugeza igihe Urukiko rw'Ikirenga ruzacira urubanza RCOMAA 0011/15/CS kubera ko urwo rubanza ruramutse rurangijwe byamutera igihombo gikabije kandi kidasubirwaho. [7] Me Ntihemuka Albert uburanira Mukamusana Henriette yatanze inzitizi zo kutakira ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette mu Rukiko rw'Ikirenga kubera ko ubujurire bw'iremezo butari mu bubasha bwarwo, ko kandi icyo kirego kitagomba kwakirwa kubera ko urubanza RCOMA 0605/14/HCC rwaciye ku kirego cyihutirwa rwabaye itegeko. [8] Urubanza rwaburanishijwe mu ruhame kuwa 10/03/2015, Kabango

Mumporeze Bernadette yunganiwe na Me Rusanganwa Jean Bosco, Mukamusana Henriette yunganiwe na Me Ntihemuka Albert, Mbanda Chantal yunganiwe na Me Zitoni Pierre Claver, naho Runanira André ahagarariwe na Me Serugo Jean Baptiste. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO: 1.Kumenya niba ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette kitagomba kwakirwa kubera ko ubujurire bw'iremezo butari mu bubasha bw'Urukiko rw'Ikirenga. [9] Me Ntihemuka Albert wunganira Mukamusana Henriette avuga ko hashingiwe ku ngingo ya 28, 7° y'Itegeko Ngenga n° 03/12/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette kitagomba kwakirwa kubera ko ubujurire bw'iremezo yatanze mu Rukiko rw'Ikirenga kuri RCOMAA 0011/15/CS butari mu bubasha bw'iremezo bitewe nuko nta ndishyi zingana na 50.000.000 Frw zagenwe mu rubanza RCOMA 0371/14/HCC-0388/14/HCC rwaciye ku rwego rwa kabiri n'Urukiko Rukuru rw'Ubucuruzi. [10] Me Rusanganwa Jean Bosco wunganira Kabango Mumporeze Bernadette avuga ko ikirego cyihutirwa yatanze gikwiye kwakirwa kubera ko ubujurire bw'iremezo yatanze muri uru Rukiko buzakirwa n'umucamanza uzaburanisha urubanza mu mizi hashingiwe ku ngingo ya 28, 2° y'Itegeko Ngenga ryavuzwe haruguru kuko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza yatambamiye rushingiye ku itegeko ritariho bitewe nuko rwaciye urubanza rushingiye ku ngingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano riterekeranye n'ikiburanwa, ko ahubwo rwagombaga gushingira ku itegeko Ngenga n° 08/2005 ryo kuwa 14/07/2005 rigenga imikoreshereze n'imicungire y'ubutaka mu Rwanda nk'uko ryahinduwe n'Itegeko Ngenga ryo mu mwaka wa 2012 kubera ko ari ryo rihuje n'icyaburanwaga kijyanye n'uburenganzira Mukamusana Henriette afite ku bikorwa by'ubwubatsi yakoreye ku butaka bwa Kabango Mumporeze Bernadette bidafite aho bihuriye n'amasezerano y'ubukode bagiranye yavuzwe haruguru, ko rero ububasha bw'Urukiko rw'Ikirenga butashingiye ku gaciro k'ikiburanwa nk'uko uburanira Mukamusana Henriette ashaka ku byumvikanisha.

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[11] Me Zitoni Pierre Claver wunganira Mbanda Chantal avuga ko ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette muri uru Rukiko gikwiye kwakirwa kubera ko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwatambamiye hashingiwe ku itegeko ritajyanye n'ikiburanwa bisa nk'aho urwo rubanza rwaciye hashingiwe ku itegeko ritariho nkuko uwunganira Kabango Mumporeze Bernadette abivuga, ko rero ubujurire bw'iremezo bwatanzwe na Kabango Mumporeze Bernadette buri mu bubasha bw'Urukiko rw'Ikirenga nk'uko biteganywa n'ingingo ya 28, 2° y'Itegeko Ngenga ryavuzwe haruguru. [12] Asobanura ko Urukiko rw'Ikirenga ruramutse rwemeje ko ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette kitakirwa kubera ko ubujurire bw'iremezo butazakirwa n'uru Rukiko byabangamira urubanza mu mizi yarwo, nyamara ibyo bitemewe n'amategeko. [13] Me Serugo Jean Baptiste uburanira Runanira André wagobotse muri uru rubanza avuga ko hashingiwe ku ngingo ya 320, igika cya 2 cy'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, umucamanza uburanisha ibirego byihutirwa agomba kubanza gusuzuma

niba ikirego yashyikirijwe kiri mu bubasha bwe. [14] Asobanura ko ku birebana n'uru rubanza, Urukiko rw'Ikirenga rutakwakira ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette kubera ko ubujurire bw'iremezo yatanze muri uru Rukiko butazakirwa kuko butari mu bubasha bw'ubucuruzi nuko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwatambamiwe hashingiwe ku ngingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iri mu mategeko y'u Rwanda ijyanye n'ikiburanwa kuko indishyi Mbanda Chantal yategetswe gutanga zikomoka ku masezerano y'ubukode yaburanwaga, ko rero umucamanza atagombaga gushingira ku Itegeko Ngenga rigenga imikoreshereze n'imicungire y'ubutaka mu Rwanda kuko icyaburanwaga kitari kijyanye no kumenya nyir'inzu yakodeshwaga. UKO URUKIKO RUBIBONA [15] Ingingo ya 320, igika cya mbere y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihuta, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo". Naho igika cya 3 cy'iyi ngingo kigateganya ko "Nyamara, Umucamanza uburanisha ibirego byihutirwa ntashinzwe kubanza gusuzuma niba ikirego cy'iremezo kiri mu bubasha cyangwa kitari mu bubasha bw'urukiko rwaregewe ikirego cyihutirwa". [16] Hashingiwe ku biteganywa n'iyi ngingo, Urukiko rurasanga ikibazo kijyanye nuko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwajuririrwe muri uru Rukiko hashingiwe ku itegeko ritariho kitasuzumwa n'Umucamanza uburanisha ibirego byihutirwa, ko ahubwo kizasuzumwa n'Inteko y'Abacamanza bazaburanisha urubanza mu mizi nkuko byanasobanuwe mu icyemezo cyafashwe n'Umwanditsi Mukuru w'Urukiko rw'Ikirenga kiri muri dosiye ubwo yasuzumaga niba ubujurire Kabango Mumporeze Bernadette yatanze muri uru Rukiko kuri n° RCOMAA 0011/15/CS bushobora kwandikwa mu bitabo byarwo, bivuga rero ko inzitizi yatanzwe na Mukamusana Henriette nta shingiro ifite kuri iyi ngingo. 2. Kumenya niba ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette kitagomba kwakirwa kubera ko urubanza RCOMA 0605/14/HCC rwaciye ku kirego cyihutirwa rwabaye itegeko.

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- [17] Me Ntihemuka Albert wunganira Mukamusana Henriette avuga ko ikirego cyihutirwa Kabango Mumporeze Bernadette yatanze muri uru Rukiko kitakwakirwa kubera ko urubanza RCOMA 0605/14/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku kirego cyihutirwa yari yatanze muri uru Rukiko rwabaye itegeko bitewe nuko atigeze arujuririra. [18] Me Rusanganwa Jean Bosco avuga ko ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette gikwiye kwakirwa kubera ko urubanza RCOMA 0605/14/HCC rwaciye ku kirego cyihutirwa rutabaye itegeko, ko ahubwo ari icyemezo cy'agateganyo cyavanyweho n'icibwa ry'urubanza RCOMA 0576/14/HCC mu mizi ryabaye kuwa 13/01/2015, ko kandi ikirego cyihutirwa yatanze muri uru Rukiko gishamikiye ku bujurire bw'iremezo yatanze bwanditse kuri RCOMAA 0011/15/CS. [19] Asobanura ko impamvu yatumye Kabango Mumporeze Bernadette atajuririra icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi ku kirego cyihutirwa aruko urubanza yatambamiye rwahise rucibwa mu mizi mu gihe gito, ko

kandi nta irangizarubanza ryakorwaga icyo gihe ku buryo ryari gutuma ajuririra icyo cyemezo. [20] Me Zitoni Pierre Claver wunganira Mbanda Chantal avuga ko ikirego cyihutirwa cya Kabango Mumporeze Bernadette yatanze muri uru Rukiko kuri RCOM 0002/15/CS gikwiye kwakirwa kubera ko kidafite aho gihuriye n'icyo yari yatanze mu Rukiko Rukuru rw'Ubucuruzi kuri RCOMA 0605/14/HCC cyavanyweho n'icibwa ry'urubanza RCOMA 0576/14/HCC mu mizi kuwa 13/01/2015 kubera ko cyari icyemezo cy'agateganyo nkuko biteganywa n'amategako kuko cyari gishamikiye ku rubanza rw'iremezo RCOMA 0576/14/HCC. [21] Me Serugo Jean Baptiste uburanira Runanira André avuga ko Urukiko rw'Ikirenga rudakwiye kwakira ikirego cyihutirwa cya Kabango Mumporeze Bernadette kubera ko atajuririyeho urubanza RCOMA 0605/14/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku kirego cyihutirwa mu gihe cy'iminsi cumi n'itanu (15) iteganywa n'ingingo ya 322, igika cya 2 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bivuga ko icyo cyemezo cyabaye ndakuka, kikaba rero kidakwiye kongera kuburanishwa muri uru Rukiko bitewe nuko ikiburanwa muri uru rubanza gisa neza n'icyaburanyweho mu Rukiko Rukuru rw'Ubucuruzi ku kirego cyihutirwa atajuririyeho. UKO URUKIKO RUBIBONA [22] Ingingo ya 316, igika cya mbere y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihuta gishyikirizwa umucamanza ushinze kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara". [23] Hashingiye ku biteganywa n'iyi ingingo, Urukiko rurasanga kuba Kabango Mumporeze Bernadette yatanze ikirego cy'iremezo muri uru Rukiko kikandikwa kuri n° RCOMAA 0011/15/CS, nta kimubuza gutanga ikirego cyihutirwa ashingiye ku kirego cy'iremezo asaba guhagarikisha irangiza ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC yumva rimubangamiye mu gihe ikirego cy'iremezo kitaraburanishwa.

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[24] Urukiko rurasanga ibyo Mukamusana Henriette na Runanira André baburanisha byuko ikirego cyihutirwa Kabango Mumporeze Bernadette yatanze muri uru Rukiko kitakwagirwa kubera ko icyemezo n° RCOMA 0605/14/HCC cyafashwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 15/12/2014 cyabaye itegeko kuko kitajuririyeho nta shingiro bifite, kubera ko hashingiye ku biteganywa n'ingingo ya 316 y'Itegeko ryavuzwe haruguru, icyo cyemezo cyari icy'agateganyo ku buryo cyavanyweho n'icibwa mu mizi ry'urubanza n° RCOMA 0576/14/HCC cyari gishingiyeho ryabaye kuwa 13/01/2015, bivuga rero ko inzitizi yatanze na Mukamusana Henriette nta shingiro ifite kuri iyi ingingo. [25] Hashingiye ku bisobanuro byatanze haruguru, Urukiko rurasanga rero inzitizi zatanze na Mukamusana Henriette zavuzwe haruguru zigamije kutakira ikirego cyihutirwa cyatanze na Kabango Mumporeze Bernadette muri uru Rukiko nta shingiro zifite, kikaba rero gikwiye kwakirwa kigasuzumwa.

3. Kumenya niba hari impamvu yihutirwa Kabango Mumporeze Bernadette yatanze yatuma irangizarubanza risabwa rihagarikwa [26] Me Rusanganwa Jean Bosco na Kabango Mumporeze Bernadette yunganira bavuga ko Urukiko rw'Ikirenga rukwiye guhagarika irangiza ry'urubanza RCOMA 0371/14/HCC- 0388/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 02/10/2014 hashingiwe ku ngingo ya 180 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ko irangiza ry'urubanza rwatambamiwe rihagarikwa n'Urukiko iyo ryasabwe n'ugarutambamiye, kubera ko riramutse rikozwe, maze inzu yakodeshwaga igatezwa cyamunara kugira ngo Mbanda Chantal yishyure indishyi yaciwe mbere yuko Urukiko rw'Ikirenga rusuzuma ubujurire bw'iremezo yatanze muri uru Rukiko bwanditse kuri RCOMAA 0011/15/CS byatera Kabango Mumporeze Bernadette igihombo gikabije kandi kidasubirwaho kubera ko asangiye iyo nzu na Mbanda Chantal kuko bafatanyije kuyigura, ko kandi basangiye inzu iri ku Gisenyi n'indi iri i Musanze. [27] Me Ntihemuka Albert na Mukamusana Henriette basobanura ko Kabango Mumporeze Bernadette yatambamiye urubanza RCOMA 0371/14/HCC-0388/14/HCC agamije gutinza irangiza ryarwo, nyamara Mukamusana Henriette afite ibimenyetso bigaragaza ko inzu Kabango Mumporeze Bernadette asaba ko itagurishwa muri cyamunara yarangije kuyigurisha afatanyije n'umugabo we ubwo bahabwaga 90.010.706 Frw y'ingurane yayo igihe bimuraga abaturage kubera inyungu rusange (expropriation). [28] Me Zitoni Pierre Claver wunganira Mbanda Chantal avuga ko Urukiko rw'Ikirenga rukwiye guhagarika irangiza ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC kugira ngo umutungo wa Kabango Mumporeze Bernadette n'umugabo we utagurishwa muri cyamunara. [29] Me Serugo Jean Baptiste uburanira Runanira André avuga ko irangiza ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC riramutse rikozwe ku mutungo wa Mbanda Chantal, nta ngaruka ryagira ku mutungo wa Kabango Mumporeze Bernadette kuko nta kimenyetso yatanze kigaragaza ko abasangiye uwo mutungo, uretse kubivuga gusa, ko ahubwo Kabango Mumporeze Bernadette yagobotse muri ruriya rubanza agamije gutinza irangizwa ryarwo gusa. UKO URUKIKO RUBIBONA

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- [30] Ingingo ya 180, igika cya 4 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ko "Gutambamira urubanza rwaciwe ntibihagarika irangiza ryarwo, keretse iyo rihagaritswe n'urukiko rwaregawe, bisabwe n'umuburanyi". [31] Ku birebana n'uru rubanza, muri dosiye hari itegeko n° 010/15/TC/MUS/RP ryafashwe n'Urukiko rw'Ubucuruzi rwa Musanze kuwa 16/02/2015 rigaragaza urutonde rw'imitungo itimukanwa ya Mbanda Chantal izatezwa cyamunara kuwa 23/03/2015 kugira ngo yishyure indishyi yaciwe mu rubanza RCOMA 0371/14/HCC-0388/14/HCC, nyamara muri uru Rukiko hari ubujurire bw'iremezo bwanditse kuri n° RCOMAA 0011/15/CS butaraburanishwa. [32] Hashingiwe ku mategeko n'ibisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga irangiza ry'urubanza RCOMA 0371/14/HCC-0388/14/HCC rigomba guhagarara kugeza igihe urubanza RCOMAA 0011/15/CS

ruzacibwa burundu kubera ko riramutse ribaye byatera Kabango Mumporeze Bernadette igihombo gikabije mu gihe bigaragaye ko yari afatanyije inzu yakodeshwaga na Mbanda Chantal. [33] Urukiko rurasanga ikibazo kijyanye no kumenya niba Kabango Mumporeze Bernadette afatanyije iyo nzu na Mbanda Chantal bizasuzumwa n'urukiko ruzaburanisha urubanza mu mizi nkuko biteganywa n'ingingo ya 320, igika cya mbere y'Itegeko ryavuzwe haruguru, ibuza Umucamanza uburanisha ibirego byihutirwa kubangamira urubanza rw'iremezo mu mizi yarwo.

4. Kumenya niba Mukamusana Henriette na Runanira André bahabwa indishyi basaba muri uru rubanza [34] Me Ntihemuka Albert wunganira Mukamusana Henriette avuga ko Kabango Mumporeze Bernadette akwiye kumuha 1.000.000 Frw y'ikurikiranarubanza na 3.000.000 Frw y'igihembo cya Avoka hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'amategeko y'imbonezamubano, iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". [35] Asobanura ko Urukiko rw'Ikirenga rukwiye guha Mukamusana Henriette izo ndishyi asaba muri uru rubanza rushingiye ku ngingo ya 20 y'Amabwiriza ya Perezida w'Urukiko rw'Ikirenga n° 002/2014 yo kuwa 13/02/2014 agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko iyo ikirego kitakiriwe, uwarezwe n'uwagobokeshejwe ku gahato mu rubanza bashobora guhabwa indishyi zijyanye n'ibyo batakaje bakurikirana urubanza iyo bazisabye, ndetse ko hanashingirwa ku ngingo ya 32 y'ayo mabwiriza, iteganya ko imirimo yakozwe mu manza, ishobora kwishyurirwa igihembo cya Avoka. [36] Me Serugo Jean Baptiste uburanira Runanira André avuga ko Urukiko rw'Ikirenga rukwiye gutegeka Kabango Mumporeze Bernadette guha Runanira André 500.000 Frw y'indishyi zuko yamushoye mu manza ku maherere hashingiwe ku ngingo ya 258 y'Igitabo cyavuzwe haruguru na 1.000.000 Frw y'igihembo cya Avoka. [37] Me Rusanganwa Jean Bosco wunganira Kabango Mumporeze Bernadette hamwe na Me Zitoni Pierre Claver wunganira Mbanda Chantal bavuga ko hashingiwe ku ngingo ya 320, igika cya 4 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Kabango Mumporeze Bernadette adakwiye guha Mukamusana Henriette na Runanira André indishyi basaba mu

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rubanza rwerekeranye n'ikirego cyihutirwa, ko ahubwo bazazisaba igihe bazaburana urubanza mu mizi yarwo. UKO URUKIKO RUBIBONA [38] Urukiko rurasanga Kabango Mumporeze Bernadette atagomba guha Mukamusana Henriette na Runanira André indishyi basaba muri uru rubanza kubera ko yarutsinze, ariko bashobora kongera kuzazisaba igihe cy'iburanisha ry'urubanza mu mizi hashingiwe ku ngingo ya 320, igika cya 4 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Indishyi n'ibindi bijyanye n'amafaranga umuburanyi yakoresheje mu rubanza ku kirego cyihutirwa biregerwa hamwe n'ikirego cy'iremezo". III. ICYEMEZO CY'URUKIKO [39] Rwemeje ko ikirego cyihutirwa cyatanzwe na Kabango Mumporeze Bernadette muri uru Rukiko gifite ishingiro; [40] Rutegetse ko irangiza ry'urubanza RCOMA 0371/14/

HCC-0388/14/HCC rihagaze kugeza igihe urubanza RCOMAA 0011/15/CS ruzacibwa burundu mu mizi; [41] Ruvuze ko nta ndishyi Kabango Mumporeze Bernadette agomba guha Mukamusana Henriette na Runanira André; [42] Rutegetse Mukamusana Henriette na Runanira André gutanga amagarama y'uru rubanza angana na 100.000 Frw kuri buri wese.

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Prepared on 14 October 2026 · Esheria