

RWANDA / JUDGMENT

# NZABONIMANA N'UNDI v NKUNDABANYANGA NA LETA Y'U RWANDA

RADA 00143/2018/HC/KIG

## COURT

High Court

## DECIDED

12 January 2022

## CASE / FILE NUMBER

RADA 00143/2018/HC/KIG

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**NZABONIMANA N'UNDI v NKUNDABANYANGA NA LETA Y'U RWANDA**

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**Text****Page 1**

NZABONIMANA N'UNDI v NKUNDABANYANGA NA LETA Y'U RWANDA [Rwanda URUKIKO RUKURU – RADA 00143/2018/HC/KIG – (Nzirabagande, J. P.) 12 Mutarama 2022] Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Kurangiza urubanza – Guteza cyamunara – Ifatira – Uvuga ko umutungo wafatiriwe, ugiye kugurishwa mu cyamunara ari uwe, abimenyesha urukiko rwaciye urubanza rurangizwa hanyuma agatanga ikirego mu Rukiko rw'Ibanze rubifitiye ububasha, iyo atabikoze, ntibigira agaciro. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge Nzabonimana na Kurasenge barega Umuhesha w'inkiko utari uw'umwuga ko yarangije urubanza rutaraba itegeko kuko rwari rwarajuririwe, ko yafatiriye imitungo yabo mu buryo bunyuranyije n'amategeko, bakaba basaba ko iryo fatira ryateshwa agaciro. Abaregwa barimo Leta y'u Rwanda n'Umuhesha w'inkiko Nkundabanyanga, bavuga ko hari amafaranga Abarega bari bategetswe kwishyura mu rubanza ntibabyubahiriza biba ngombwa ko hakorwa ifatira ku mitungo yabo hakurikijwe amategeko, kugirango urubanza

rurangizwe ku ngufu. Urukiko Rwisumbuye rwemeje ko ibirego byabo nta shingiro bifite, ko ifatira ryakozwe hubahirijwe amategeko. Ibi byatumye Nzabonimana ajuririra uru Rukiko Rukuru asaba ko ifatira ryateshwa agaciro kuko hafatiriwe ibitaragombaga gufatirwa harimo imitungo ya Kurasenge kandi atarabaye umuburanyi mu rubanza rujuririrwa, ko urubanza rwarangijwe rutaraba itegeko nubwo ikirego cye mu Rukiko rw'Ikirenga kitakiriwe ariko akaba yari yatakambiye Perezida w'urwo Rukiko. Abaregwa kandi bisobanura bavuga ko urubanza rwarangijwe nyuma y'iryo takamba ry'Abarega kandi mu buryo bukurikije amategeko, ndetse inzira zose z'ubujurire zikaba zari zararangiyeye. Ikindi ni uko nta yindi nzira y'ubujurire ihagarika irangiza ry'urubanza Abarega bagaragaje ko bari basigaye, bityo impamvu batanga ikaba nta shingiro ifite kuko hagaragajwe ko urubanza rwarangijwe rwari rwabaye itegeko. Ku mpamvu y'ubujurire yatanze na Nkundabanyanga ko hafatiriwe n'ibitaragombaga gufatirwa, bikenerwa mu buzima bwa buri muni, Abaregwa bisobanuye bavuga ko iyi mpamvu nta shingiro ifite kuko imihango yose yubahirijwe, amenyeshwa ibikorwa byose, yanga kwakira inyandiko avuga ko yajuriye, yanga no kuza gukuramo ibikoresho bikenerwa mu buzima bwa buri muni. Incamake y'icyemezo: Uvuga ko umutungo wafatiriwe, ugiye kugurishwa mu cyamunara ari uwe, abimenyesha urukiko rwaciye urubanza rurangizwa hanyuma agatanga ikirego mu Rukiko rw'Ibanze rubifitiye ububasha, iyo atabikoze, ntibigira agaciro. Ubujurire nta shingiro bufite. Amagarama aherera ku isanduku ya Leta. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12, 14, 34 n'ya 111. Itegeko No 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'abahesha b'inkiko, ingingo ya 62. Itegeko No 22/2012 ryo ku wa 12/04/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 253, 255, 256, 258, 260 n'ya 268.

## Page 2

Imanza zifashishijwe: APE ISUKU Asbl na Bank of Kigali na Habiyaemye Jean Baptiste, RCOMAA 0054/2016/CS rwaciye n'Urukiko rw'Ikirenga ku wa 01/12/2017. Inyandiko z'abahanga zifashishijwe: AF Toulet, Dictionnaire des codes français: ou Manuel du droit, Paris, p.433. Urubanza I. IMITERERE Y'URUBANZA [1] Kurasenge Josephine na Nzabonimana Mathias batanze ikirego mu Rukiko Rwisumbuye bavuga ko mu kurangiza imanza RAD 0073/15/TGI/NYGE na RADA00142/2016/HC/KIG (rwajuririrwa mu Rukiko rw'Ikirenga), Nkundabanyanga Pierre Celestin, umuhesha w'inkiko utari uw'umwuga yafatiriye imitungo mu buryo bunyuranyije n'amategeko, ashyiramo imitungo Kurasenge yari avanye mu Budage kandi atarabaye umuburanyi; harangizwa urubanza rutaraba itegeko kuko rwari rwajuririrwa, ubujurire butakiriwe ariko atakambira Perezida w'Urukiko rw'Ikirenga; ntihatangwa "commandement"; urubanza rurangizwa bene urugo batariye, kandi ntihakorwa urutonde rw'ibikoresho byose byasanzwe mu nzu, kugira ngo hatagira ibizimira. Basaba gutesha agaciro ifatira ry'umutungo utimukanwa ryo ku wa 21/07/2017. [2] Uhagarariye Leta y'u Rwanda avuga ko urubanza rwarangijwe rwarabaye itegeko kuko ubujurire ku rubanza RADA 000142/2016/HC/KIG butari bwakiriwe, akaba yari yategetswe kwishyura 5.300.000 Frw ariko ntiyabyubahiriza bikaba byari gushyirwa mu bikorwa ku ngufu. Nkundabanyanga Pierre Celestin, Umuhesha w'inkiko utari

uw'umwuga, avuga ko ifatira ryakozwe mu buryo bukurikije amategeko kandi iyo biba atari iko byagenze yari kuregera Urukiko rw'ibanze hashingiwe ku ngingo ya 309 ya CPCCSA ryakoreshwaga icyo gihe, ikigamijwe akaba ari ugutinzira ishyirwa mu rubanza urega yatsinzwemo. [3] Mu rubanza RAD 000137-000138/2017/TGI/NYGE rwaciwe ku wa 29/06/2018, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Nzabonimana Mathias nta shingiro gifite, rwemeza ko icyatanzwe na Kurasenge Josephine nta shingiro gifite, ko ibyo asaba byafashweho icyemezo mu rubanza RAD 00098/2018/TGI/NYGE- RAD 00099/2018/TGI/NYGE rwaciwe n'uru Rukiko ku wa 22/05/2018. Rwemeza ko ifatira Nkundabanyanga Pierre Celestin, umuhesha w'inkiko utari uw'umwuga yakoze ku wa 21/07/2017 ritanyuranyije n'amategeko, rwemeza ko Nzabonimana Mathias agomba guha Nkundabanyanga Pierre Celestin 500.000 Frw, akanazihira Leta y'u Rwanda zo gushorwa mu manza. Ruvugako isubukurwa ry'urubanza ryari ryasabwe na Nzabonimana Mathias ritemewe, [4] Mu kwemeza ko urubanza rwarangijwe rwari rwarabaye itegeko, Urukiko rwasobanuye ko nyuma y'uko Nzabonimana Mathias atsinzwe mu Rukiko Rwisumbuye yajuririye Urukiko Rukuru, rwemeza ko imikiriye y'urubanza idahindutse, ajuririra urubanza RADA 00142/2016/HC/KIG, mu cyemezo nimeron 0003/2017/AD/GSC, Umwanditsi w'Urukiko yemeza ko ubwo bujuriye butakwagirwa, atakambira Perezida w'Urukiko rw'Ikirenga na we, mu cyemezo nimeron 0012/2017 cyafashwe ku wa 27/03/2017, yemeza ko ubujuriye bwe butakiriwe. [5] Nzabonimana Mathias yarajuriye Urukiko Rukuru, we na Me Mugume bavugako urubanza rwarangijwe rutarabaye itegeko, kuko yari yarujuririye mu Rukiko rw'Ikirenga, Ubwanditsi bwemeje ko ikirego kidakwiriye kwagirwa, atakambira Perezida w'Urukiko rw'Ikirenga, kandi muri uru Rukiko, urubanza rujuriye rubanza no gukorerwa ibanzirizazuzuma. Nkundabanyanga Pierre Celestin na Me Gahongayire Myriam umwunganira, akanahagararira Leta y'u Rwanda bavugako urubanza

### Page 3

rwarangijwe rwari rwarabaye itegeko, kuko yarujuririye mu Rukiko rw'Ikirenga, ikirego ntacyakirwa, atakambira Perezida w'Urukiko rw'Ikirenga na bwo ntacyakirwa, urubanza rurangizwa nyuma yaho. Urukiko rurasuzuma niba ifatira ryarakozwe mu kurangiza urubanza kandi rutarabaye itegeko. [6] Ku birebana no kuba harafatirirwe ibitangombaga gufatirwa bikenera mu buzima bwa buri muni, Urukiko rwasobanuye ko kuba Nzabonimana Mathias yari yaranze kurangiza urubanza ku neza, kandi aho ifatira rikorewe asabwa incuro nyinshi kuza gushyikira ibintu bikenerwa mu buzima bwa buri muni, ntiyaboneka, ko rero nta kindi cyari gukorwa. [7] Nzabonimana Mathias yajuririye Urukiko Rukuru, we na Me Mugume, umwunganira, bavugako ifatira ryateshwa agaciro kubera ko hafatirirwe n'ibitangombaga gufatirwa, bikoreshewa mu buzima bwa buri muni. Nkundabanyanga Pierre Celestin na Me Gahongayire Myriam, umwunganira, akanahagararira Leta y'u Rwanda bavugako iyi mpamvu nta shingiro ifite, kuko imihango yose yubahirijwe, amenyeshwa ibikorwa byose, yanga kwakira inyandiko no kuza gukuramo ibintu akoresha mu buzima bwa buri muni. Urukiko rurasuzuma niba harafatirirwe n'umutungo utagomba gufatirwa, iryo fatirwa rigateshwa agaciro. [8] Ku birebana no kuba Nzabonimana Mathias yaramenyeshwe ko hagiye gukorwa ifatira (commandement), Urukiko rwasobanuye ko ibimenyetso bigaragaza ko yandikiwe inyandiko zinyuranye, zikanagezwa iwe

mu rugo, bakanga kuzakira (ku 08/06/2017 iyo ku wa 21/06/2017), akaba nta kindi cyari gukorwa, uretse kuzishyikiriza ubuyobozi. [9] Nzabonimana Mathias yarajuriye, we na Me Mugume umwunganira, bavuga ko batamenyeshejwe ko hari ifatira, ntibashyikirizwa «commandement», ifatira rikorwa nta nzego z'ubuyobozi zibimenyeshejwe. [10] Nkundabanyanga na Me Gahongayire Myriam umwunganira, agahagararira Leta y'u Rwanda, bavuga ko ibi atari ukuri, ko Nzabonimana Mathias yandikiwe abaruwa atandukanye, handikirwa inzego z'umutekano, Nzabonimana Mathias ayimenyeshwa n'inzego z'ubuyobozi, ntiyaboneka ku isaha yari yatanze. Urukiko rurasuzuma niba hari ibimenyetso byirengagijwe by'uko Nzabonimana Mathias atamenyeshejwe ibyerekeranye n'ifatira, rikaba ryateshwa agaciro. [11] Ku byerekeranye no kuba hatarubahirije amategeko, ngo hakorwe urutonde rw'ibifatiriwe, Urukiko rwavuze ko umuhesha w'inkiko yubahirije ingingo ya 255, 256 na 258 za CPCCSA. Nzabonimana Mathias ajurira avuga ko hatakozwe urutonde rw'imitungo ifatiriwe n'itagomba gufatirwa kugira ngo hatagira ibitakara n'ibyangirika, Urukiko Rwisumbuye ntirwamugenera indishyi kandi yaragize igihombo. Nkundabanyanga Pierre Celestin na Me Gahongayire Myriam umwunganira, akanahagararira Leta y'u Rwanda bavuga ko iyi mpamvu nta shingiro yahabwa kubera ko urutonde rw'umutungo ufatirwa rwakozwe, Nzabonimana ahabwa umwanya wo gukuramo imitungo idafatiriwe ntiyabikora cyangwa ngo ashyikirize ikibazo cye inzego zibifitiye ububasha. Urukiko rurasuzuma niba hari ibimenyetso bigaragaza ko hatakozwe urutonde rw'umutungo udafatirwa, bigatera igihombo cyaryozwa abaregwa. [12] Ku birebana no kuba abaregwa basubiza bafatanyije (in solidum) ibyangijwe, Urukiko rwasobanuye ko bitasuzumwa kuko byafashweho icyemezo mu rubanza RAD 00098- 00099/208/TGI/NYGE rwaciye ku wa 22/05/2018, rwemeje ko inzu yafunzwe harangizwa urubanza RADA 00142/2016/HC/KIG ifungurwa Nzabonimana na Kurasenge bafatamo ibintu bavuga ko ari ibyabo hatarimo ibiri ku rutonde rw'ibyafatiriwe. [13] Nzabonimana Mathias yarajuriye, we na Me Mugume, bavuga ko ifatira ryakozwe mu buryo bunyuranyije n'amategeko, bimutera igihombo kuko kuba umutungo utaragomba gufatirwa utarakorewe urutonde byateye igihombo cyakwishyurwa n'abaregwa bafatanyije. Abaregwa bavugwa ko uretse ko Urukiko rwafashe icyemezo cy'uko inzu ifungurwa agafata imitungo ye, ko rero

## Page 4

bitakongera kuburanwa no gufatwaho icyemezo muri uru rubanza. Kumenya niba ibyerekeranye n'imitungo itaragombaga gufatirwa ya Nzabonimana Mathias byarafashweho icyemezo, bikaba bitasuzumwa muri uru rubanza. [14] Ku byerekeranye n'ikirego cya Kurasenge Josephine uvuga ko mu byafatiriwe harimo imitungo ye yafatiriwe (imyambaro ye, amafaranga ye, ibyangombwa bye, impapuro z'umushinga we); Urukiko rwasobanuye ko nta kimenyetso kigaragaza ko yangiwe kujya mu nzu gufata imitungo ye, kuko ifatira ryakozwe ari mu rugo, ntiyamenyesha abayobozi bari aho ko hari ibintu bye akeneye gufata kandi nyamara icyo gihe yanagiye mu nzu. Ruvuga kandi ko ku munsu wa cyamunara, Kurasenge yavuze ko hari imitungo ye irimo, cyamunara yagaritswe amasaha 24 ngo agaragaze ibintu bye, ahubwo akuramo igikapu, kandi ntiyubahirije ibiteganywa mu ngingo ya 268 ya CPCCSA yakoreshwaga icyo gihe ku muntu uvuga ko ibintu byafatirwe ari ibye. Mu mitungo Kurasenge agaragaza ko yafatiriwe kandi ari iye, hanabokemo

imitungo Nzabonimana Mathias yaragaragaje ko ari iye, mu rubanza RAD 00098/2018/TGI/NYGE – RAD 00099/2018/TGI/NYGE, ikirego kihutirwa. [15] Kurasenge Josephine yajuririye Urukiko Rukuru, we n’umwunganizi, bavuga ko mu rubanza rujuririrwa hirengagijwe ko mu gufatira umutungo, hafatiwe n’utari uwe, nk’uko bigaragazwa n’inyandiko «to whom it may concern», akaba kandi yararegeye Urukiko, ko bitari ngombwa kubimenyesha izindi nzego, kuko urubanza cyamunara yagombaga kuba ari uko uru rubanza ruciwe mu mizi. [16] Nkundabanga Pierre Celestin n’Uhagarariye Leta y’u Rwanda bavuga ko iyi mpamvu nta shingiro ifite, kuko hakorwa ifatira we yari mu rugo, yanga kvanamo ibintu bye, hakorwa urutonde rw’umutungo ufatiriwe, ahari, ntiyavuga na nyuma ntiyaregera urwego rubifitiye ububasha. Ku byo kuba ntaho ahuriye n’urubanza rurangiza, bavuga ko n’ubundi icyaregowe ari ifatira ryakozwe ku wa 21/07/2017 rinyuranyije n’amategako, si irangizwa ry’urubanza, kandi ku munsu wa cyamunara ku mutungo wafatiriwe ku wa 08/09/2017, hagamijwe kugurisha umutungo wautimukana wafatiriwe, wa Nzabonimana Mathias, Kurasenge yavuze ko mu mtiungo yafatiriwe harimo uwe, cyamunara irasubikwa, mu minsi 6 iteganywa mu ngingo ya 268 ya CPCCSA ntiyagira icyo akora. Bongeraho ko imwe mu mitungo avuga (intebe zo muri salo, akabati, firigo, akabati, radiyo) byafashweho icyemezo mu rubanza RAD 0074/15/TGI/NYGE, Nzabonimana Mathias yemeye ko ari ye. Urukiko rurasuzuma niba ibyerekeranye n’umutungo Kurasenge avuga ko ari uwe wafatiriwe, warafashweho icyemezo, kikaba kitasuzumwa. [17] Ku byerekeranye n’indishyi zinyuranye zasabwe n’ababuranyi, Urukiko rwasobanuye ko ku mafaranga y’umurinzi wacungishijwe imitungo yafatiriwe, asabwa na Leta y’u Rwanda atagenwa kuko nta kimenyetso byatanzwe. Leta y’u Rwanda na Nkundabanyanga Pierre Celestin bagenewe 500.000 Frw buri wese, y’igihembo cya avoka. [18] Nzabonimana Mathias yajuririye Urukiko Rukuru, we na Me Mugume, bavuga ko indishyi zari zikwiye kuko ifatira ryakozwe mu buryo bunyuranyije n’amategako, ayanwa mu manza nta mpamvu, kandi imwe mu mitungo ye irangirika, iribwa, asaba indishyi z’akababaro zingana na 10.000.000Frw; 3.000.000 Frw z’ikurikiranarubanza n’igihembo cya avoka ku rwego rwa mbere n’urwa kabiri, 200.000 Frw y’ikurikiranarubanza na 90.000 Frw y’amagarama y’urubanza. Kurasenge Josephine asaba indishyi z’akababaro zingana na 30.000.000 Frw hakanitabwa ku nyandiko z’umushinga we zafungiranwe, umushinga ntiwashobora gukomeza. Abaregwa bavuga ko izo ndishyi zidakwiye kuko ifatira ryakozwe mu buryo bukurikije amategako. Urukiko rurasuzuma ishingiro ry’indishyi zisabwa muri uru rubanza. [19] Urubanza rwaburanishijwe mu ruhamwe ku nshuro ya nyuma ku wa 05/01/2022, Nzabonimana Mathias yunganiwe na Me Mugume, Nkundabanyanga Pierre Celestin yunganiwe na Me Gahongayire Myriam, anahagarariye Leta y’u Rwanda, Kuresenge Josephine yunganiwe na Me Theophile. Me

## Page 5

Mugume yasabye ko hagobokeshwa Uwingeneye Jean Baptiste, wacungishijwe umutungo wafatiriwe n’utarafatiriwe, ntibyahabwa agaciro kuko impamvu zitangwa zidahuye n’ibisobanurwa mu itegeko. [20] Ibibazo bisuzumwa mu rubanza ni ibi bikurikira: - Kumenya niba ifatira ryarakozwe mu kurangiza urubanza kandi rutaraba itegeko. - Kumenya niba mu gufatira harafatiriwemo n’ibitagomba gufatirwa mu buryo bunyuranyije n’amategako, ifatira rigateshwa agaciro. - Kumenya niba hari ibimenyetso byirengagijwe by’uko Nzabonimana

Mathias atamenyeshejwe ibyerekeranye n'ifatira, rikaba ryateshwa agaciro. - Kumenya niba ibyo kuba hatarakozwe urutonde rw'umutungo udafatirwa n'udafatirwa, bigatera igihombo cyakwishyurwa, byarafashweho icyemezo. - Kumenya niba Kurasenge yagenerwa indishyi ku mutungo avuga ko ari uwe wafatiriwe, ukangirika, byarafashweho icyemezo, bikaba bitasuzumwa - Gusuzuma ibyerekeranye n'ishingiro ry'indishyi zisabwa muri uru rubanza. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ifatira ryarakozwe harangizwa urubanza rutaraba itegeko [21] Ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets, iteganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Iyi ngingo zumvikanisha ko urega agaragaza ibimenyetso by'ibyo aregera. [22] Urukiko rwemeje ko urubanza rwarangijwe rwari rwarabaye kubera ko Nzabonimana Mathias amaze gutsindwa mu Rukiko Rwisumbuye yajurirye Urukiko Rukuru, rwemeza ko imikirize y'urubanza idahindutse, ajuririra urubanza RADA 00142/2016/HC/KIG, Urukiko rw'Ikirenga, mu cyemezo nimeru 0003/2017/AD/GSC, Umwanditsi w'Urukiko yemeza ko ubwo bujurire butakwagirwa, atakambira Perezida w'Urukiko rw'Ikirenga na we, mu cyemezo nimeru 0012/2017 cyafashwe ku wa 27/03/2017, yemeza ko ubujurire bwe butakiriwe, ifatira rikorwa ku wa 21/07/2017. [23] Nzabonimana Mathias yarajurirye Urukiko Rukuru, we na Me Mugume bavuga ko urubanza rwarangijwe rutari rwaba itegeko, kuko yari yarujurirye mu Rukiko rw'Ikirenga, Ubwanditsi bwemeje ko ikirego kidakwiye kwakirwa, atakambira Perezida w'Urukiko rw'Ikirenga, kandi muri uru Rukiko, urubanza rujurirwe rubanza no gukorerwa ibanzirizasuzuma, ibi bikaba bitari byagakozwe. [24] Nkundabanyanga Pierre Celestin na Me Gahongayire Myriam umwunganira, akanahagararira Leta y'u Rwanda, bavuga ko urubanza rwarangijwe rwari rwarabaye itegeko, kuko yarujurirye mu Rukiko rw'Ikirenga, ikirego nticyakirwa, atakambira Perezida w'Urukiko rw'Ikirenga na bwo nticyakirwa ni mu cyemezo cyafashwe ku wa 27/03/2017, urubanza rurangizwa nyuma yaho ku wa 21/07/2017. [25] Hashingiwe ku bigaragara muri dosiye, urubanza RADA 00142/2016/HC/KIG rwarangizwaga, rwari rwajurirwe mu Rukiko rw'Ikirenga, mu cyemezo 0003/2017/AD/GSC, Umwanditsi yemeza ko ubujurire budakwiye kwakirwa, asobanura impamvu. Nzabonimana Mathias atakambira Perezida w'Urukiko rw'Ikirenga, mu cyemezo cye nimeru 0012/2017 cyo ku wa 27/03/2017 yemeza ko ubujurire budakwiye kwakirwa. Urukiko rukaba rusanga ifatira ryarakorewe urubanza rwarabaye itegeko, rugomba kurangizwa, kubera ko inzira z'ubujurire zari zarangiye, ubujurire mu Rukiko rw'Ikirenga ntibwakirwa, hanyuma ifatira rikorwa ku 21/07/2017, kandi Nzabonimana Mathias nta yindi nzira y'ubujurire ihagarika irangiza ry'urubanza agaragaza ko yari asigaje, kuko zose zari

## Page 6

zarangiye. Iyi mpamvu rero ikaba nta shingiro ifite, kuko hagaragajwe ko ubanza rwarangijwe rwari rwabaye itegeko.

2. Kumenya niba harafatiriwe umutungo utaragombaga gufatirwa, mu buryo bunyuranyije n'amategeko, nk'impamvu yo gutesha agaciro iryo fatira [26] Ingingo ya 12 y'Itegeko ryavuzwe haruguru, iteganya ko urega agaragaza ibimenyetso by'ibyo aregera. Ingingo ya 253 y'iryo Tegeko iteganya ko umuburanyi watsinzwe atarangije urabanza rwe ku neza mu gihe cyategatswe rurangizwa ku gahato hafatirwa ibintu bye bigatezwa cyamunara. Akaryozwa kandi ikiguzi cy'imirimo yakozwe mu kururungiza. Ingingo ya 260 y'iryo Tegeko, igika cya 2 iteganya ko ibiryamwaho n'ibyambarwa bya ngombwa kuri nyir'ugufatirwa n'umuryango we ntibishobora gufatirwa. Izi ngingo zumvikanisha ko mu gihe umuburanyi adashatse kurangiza ku neza urubanza yatsinzwe bikorwa ku ngufu za Leta, hagafatirwa umutungo we, uretse ibiryamwaho n'ibyambarwa. [27] Ku birebana no kuba harafatiriwe ibitagombaga gufatirwa umuntu akenera mu buzima bwa buri muni, Urukiko rwasobanuye ko kuba Nzabonimana Mathias yari yaranze kurangiza urubanza ku neza, amenyesha ko ifatira rizakorwa, aho ifatira rikorewe asabwa incuro nyinshi kuza gushyikira ibintu bikenerwa mu buzima bwa buri muni, ntiyaboneka, ko rero nta kindi cyari gukorwa kitari ingufu za Leta. [28] Nzabonimana Mathias yajuririyeye Urukiko Rukuru, we na Me Mugume umwunganira bavuga ko ifatira ryatashwa agaciro kubera ko hafatiriwe n'ibitangombaga gufatirwa, bikenerwa mu buzima bwa buri muni. Nkundabanyanga Pierre Celestin na Me Gahongayire Myriam, umwunganira, akanahagararira Leta y'u Rwanda, bavuga ko iyi mpamvu nta shingiro ifite, kuko imihango yose yubahirijwe, amenyeshwa ibikorwa byose, yanga kwakira inyandiko avuga ko yajuriye, yanga no kuza gukuramo ibikoresho bikenerwa mu buzima bwa buri muni. UKO URUKIKO RUBIBONA [29] Nk'uko bigaragara muri dosiye, mu rubanza RADA 00142/2016/HC/KIG, Nzabonimana Mathias yatsinzwemo na Leta y'u Rwanda, ategukwa kuyishyura 5.300.000 Frw akomoka ku bukode bw'inzu yari yakodesheje. Ku wa 08/06/2017 no ku wa 21/06/2017, hatangwa inyandiko zimumenyesha ko agomba kwishyura (atazakiriye zishyikirizwa inzego z'ubuyobozi), akaba rero nta kindi cyari gukorwa kugira ngo urubanza yatsinzwe rurangizwe uretse gukoresha ingufu za Leta. Urukiko rusanga kuvuga ko hafatiriwe n'umutungo utagomba gufatirwa bitahabwa agaciro kubera ko mu nyandikomvugo y'ibyafatiriwe yo ku wa 21/07/2017, hagaragazwa umutungo wafatiriwe, ntihagaragazwa umutungo urimo utaragombaga gufatirwa; hanagaragazwa kandi ibaruwa yo ku wa 28/07/2017 yandikiye Nzabonimana Mathias asabwa kuza kuri MINIJUST akajyana n'Umuhesha w'Inkiko ngo amufungurire inzu, afatemo umutungo w'umuryango we wimukanwa utari ku rutonde rw'ibyafatiriwe. Urukiko rusanga rero nta tegeko ritubahirijwe mu gufatira umutungo, kuko urutonde rwakozwe n'urw'umutungo wafatiriwe, utarafatiriwe ukingiranywe mu nzu, nyirawo ntagaragaza ko yashatse kuwufata ngo bamwangire, kandi yari yabisabwe mu nyandiko, kandi mu Itegeko havugwamo ko ufatira umutungo, akora urutonde rw'umutungo afatiriye; byumvikanisha ko udafatiriye uguma mu maboko ya nyirawo.
3. Kumenya niba hari ibimenyetso byirengagijwe by'uko Nzabonimana atamenyeshejwe ko ifatirwa ry'umutungo we, rikaba ryatashwa agaciro [30] Ingingo ya 12 yavuzwe haruguru, ko urega agomba kugaragaza ibimenyetso by'ibyo aburana iteganya. Ingingo ya 34 y'iryo Tegeko igateganya ko urwandiko ruhamagara rutangwa n'umuhesha w'urukiko, umwanditsi

cyangwa undi muntu wese ubifitiye ububasha. Ruhaba uregwa ubwe, yabura rugashyikirizwa iwe mu rugo cyangwa mu icumbi rye, umuntu uhaba ufite nibura imyaka 16. Iyo

## Page 7

binaniranye rushobora gusigirwa Umunyamabanga Nshingwabikorwa ku rwego rw'Akagari (...). Ingingo ya 62 y'Itegeko No 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'abahesha b'inkiko, iteganya ko ibikorwa by'umuhesha w'inkiko mu rwego rw'imirimo ashinzwe bifatwaho ukuri keretse igihe biteshejwe agaciro. Izi ngingo zumvikanisha ko urega agaragaza ibimenyetso, urwandiko ruhamagara (n'urundi rwandiko rumenyeshya) rukaba rushyikirizwa uwo rugenewe, bitashoboka rugashyikirizwa ubuyobozi; ibikorwa by'umuhesha w'inkiko bikagira agaciro igihe cyose bitateshejwe agaciro. [31] Ku birebana no kuba Nzabonimana Mathias yamenyeshejwe ko hagiye gukorwa ifatira (commandement), Urukiko rwasobanuye ko ibimenyetso bigaragaza ko yandikiwe inyandiko zinyuranye, zikanagezwa iwe mu rugo, abari iwe bakanga kuzakira (iyo ku wa 08/06/2017 n'iyo ku wa 21/06/2017), akaba nta kindi cyari gukorwa, uretse kubahiriza amategeko, mu gihe ufatirirwa atabyemeye. [32] Nzabonimana Mathias yarajuriye we na Me Mugume umwunganira, bavuga ko batamenyeshejwe ko hari ifatira ry'umutungo rizakorwa, ntibashyikirizwa «commandement», kuko we yari yagiye ku ishuri, yumvishwa kuri telefoni n'abari mu rugo rwe ko ari gusenyerwa, bikorwa nta nzego z'ubuyobozi zimenyeshejwe na we ubwe atabimenyeshejwe, aka ari uguhungabanya uburenganzira bwe. [33] Nkundabanyanga na Me Gahongayire Myriam umwunganira, agahagararira Leta y'u Rwanda, bavuga ko ibi atari ukuri, kuko Nzabonimana Mathias yandikiwe inyandiko nyinshi zirimo icyemezo kimuhatira kwishyura cyo ku wa 08/06/2017, yanashyikirijwe n'ubuyobozi yanga kugifata, hari inyandiko yo ku wa 07/07/2017 yandikiwe urwego rwa polisi isaba abapolisi bo gufasha mu kurangiza urubanza, Nzabonimana Mathias ayimenyeshwa n'inzego z'ubuyobozi, ku munsu wo gufatira umutungo, yasabye ko bamutegereza kuko yari ku ishuri, bamutegereza kuva saa munani kugeza saa kumi kandi na we yemeye ko yahamagawe n'ubuyobozi bw'umudugudu. UKO URUKIKO RUBIBONA [34] Urukiko rusanga ibyo kuba atamenyeshejwe ko hari ifatira bitahabwa agaciro kubera ko muri dosiye habonekamo ko Nkundabanyanga Pierre Celestin, umuhesha w'inkiko utari uw'umwuga, yandikiye Nzabonimana Mathias inyandiko zinyuranye harimo iyo ku wa 08/06/2017 yajyanywe iwe mu rugo, abari mu rugo ntibemere kuyakira, barimo na Kurasenge; hari iyo ku wa 21/06/2017 na yo yajyanywe mu rugo ntibayakira ariko izo nyandiko zishyikirizwa inzego z'ubuyobozi handikwaho ko ku wa 21/06/2017 nageze kwa Nzabonimana Mathias mushyiriyeye izi nyandiko; maze abo nahanze banga kuzakira. Ndetse na we ubwe avuga ko yajuriye ngo ntazo yakira. Izi nyandiko kandi n'ubwo atari izihamagara umuburanyi, ariko zifite icyo zimumenyesha, zikaba kandi zaratanze n'umuhesha w'inkiko, ibyanditsweho bigumana agaciro igihe cyose bitaregewe. [35] Rusanga kandi kuba Nzabonimana yamenyeshejwe ifatira, na we ubwe atabihakana kuko mu iburanisha yemeye ko Nkundabanyanga yamuhamagaye amubwira ko aje gufatira umutungo, amubwira ko ari ku kazi, kandi ntiyavugurujye ko bamutegereje kugera kuva saa munani kugera saa kumi, bikarangira ataje. Muri dosiye kandi habonekamo inyandiko yo ku wa 07/07/2017, Nkundabanyanga Pierre Celestin yandikiye urwego

rwa polisi asaba abapolisi bo mukufasha mu gikorwa cyo gufatira umutungo. Kuba kuri PV y'ifatira hatabonekaho umupolisi wo mu rwego rwo hejuru, bikaba bitafatwa nk'inenge cyangwa impamvu yatuma igikorwa cyo gufatira giteshwa agaciro, kubera ko icyo inzego z'umutekano zikenerwaho ni ugucunga umutekano mu gihe haba hari uwigometse ku gikorwa cyo kurangiza urubanza.

4. Kumenya niba hatarakozwe urutonde rw'umutungo udafatirwa n'ufatirwa byarateye igihombo, abaregwa bakishyura indishyi, byarasuzumwe

## Page 8

[36] Ingingo ya 255 y'Itegeko No 22/2012 ryo ku wa 12/04/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ko umuhesha w'inkiko afatira ibintu ufatirwa ahari, ufatira n'abatangabuhamya babiri, bagashyira umukono cyangwa igikumwe ku nyandiko y'iryo fatira. icyakora, kuba ufatirwa, ufatira n'abatangabuhamya badahari ntibituma ifatira ritagira agaciro. Ingingo ya 256 y'iri Tegeko igateganya ko uretse ibisanzwe bikubiye mu nyandiko z'Abahesha b'inkiko, inyandikomvugo y'ifatira ibamo ikindi cyemezo gihatira kwishyura iyo ifatira rikozwe hari ufatirwa, ikavuga ku buryo busobanuye neza ibintu bifashwe n'umunsi bizagurishirizwaho. [37] Ingingo ya 14 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imbiranishirize y'imanza 'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ko urubanza rwaciye ku rwego rwa nyuma ntirushobora kongera kuburanishwa bundib ushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe. Ibisobanuwe muri izo ngingo byumvikanisha uburyo ifatira rikorwa n'abagomba kuba bahari n'ibikubiye mu nyandikomvugo y'ifatira, kandi icyaburanwe mu zindi manza kigafatwaho icyemezo nticyongerwa kuburanwa. [38] Ku birebana no kuba hatarubahirije amategeko, ngo hakorwe urutonde rw'ibifatiriwe, Urukiko rwavuze ko umuhesha w'inkiko yubahirije ingingo ya 255, 256 na 258 za CPCSA, naho ibyo kuba abaregwa bakwishyura bafatanyije (in solidum) ibyangijwe bitagombaga gufatirwa, bitasuzumwa kuko byafashweho icyemezo mu rubanza RAD 00098-00099/208/TGI/NYGE rwaciye ku wa 22/05/2018, rwemeje ko inzu yafunzwe harangizwa urubanza RADA 00142/2016/HC/KIG ifungurwa Nzabonimana na Kurasenge bafatamo ibintu bavuga ko ari ibyabo hatarimo ibiri ku rutonde rw'ibyfatiwe. [39] Nzabonimana Mathias ajurira avuga ko hatakozwe urutonde rw'imitungo ifatiriwe n'itagomba gufatirwa kugira ngo hatagira ibitakara, uyu munsi hakaba harazimiye, hangirika imitungo ye itaranagombaga gufatirwa, indi iribwa, bikaba byaramuteye igihombo ariko Urukiko Rwisumbuye ntirwamugenera indishyi, kandi mu kirego kihutirwa haremejwe ko ikirego cye gifite ishingiro kuri bimwe, rugateka ko inzu ikingurwa, asaba ko abaregwa bafatanyije kumwishyura indishyi z'agaciro kagaragajwe muri dosiye. [40] Nkundabanyanga Pierre Celestin na Me Gahongayire Myriam umwunganira, akanahagararira Leta y'u Rwanda bavuga ko iyi mpamvu nta shingiro yababwira kubera ko urutonde rw'umutungo ufatirwa rwakozwe, Nzabonimana ahabwira umwanya wo gukuramo imitungo idafatiriwe ntiyabikora cyangwa ngo ashyikirize ikibazo cye inzego zibifitiye ububasha. UKO URUKIKO RUBIBONA [41] Nk'uko biboneka muri dosiye y'urubanza RAD

00098-00099/2018/TGI/NYGE rwacye ku wa 22/05/2018 n'Urukiko Rwisumbuye rwa Nyarugenge, ku rupapuro rwa 6, havuzwemo ibintu bidashobora gufatirwa birimo ibiryamirwa n'ibyambarwa bya ngombwa kuri nyir'ugufatirwa n'umuryango we; ibikorsho bya ngombwa mu murimo ubeshejeho umuntu, mu mwuga cyangwa mu mirimo nyir'ugufatirwa n'urugo rwe Babura ntibabeho, 2/3 by'ibiribwa bitunze nyir'ugufatirwa n'umuryango we; igice cy'umushahara amategeko y'umurimo avuga ko kidafatirwa na 1/3 cya pansiyi y'umuntu utagira ikindi yiyambaza cyatuma abaho. [42] Hashingiye ku bisobanuwe haruguru, icya mbere kigaragara ni uko uru Rukiko rusanga ibivugwa na Nzabonimana Mathias ko abaregwa, bafatanyije basubiza ibikoresho bitagombaga gufatirwa bikaba byarangiritse, byaribwe cyangwa byarazimiye, bitagombye gusuzumwa kuko byafashweho icyemezo mu kirego kihutirwa, cyasuzumiwemo ibyerekeranye no gufungura inzu irimo umutungo wafatiriwe, Urukiko rugatega ko iyo nzu ifungurwa, Nzabonimana Mathias agakuramo ibintu bitafatiriwe birimo n'ibigize ubuzima bw'umuryango bwa buri muni; iki cyemezo kandi si

## Page 9

icy'agateganyo, ngo kibe cyahindurwa, kuko ibikoresho bitari bifatiriwe ntaho byahurizwa n'urubanza rurangizwa, icyemejwe muri kiriya kirego cyihutirwa kikaba cyarabaye ndakuka, kikaba kitakongera gusuzumwa, kuko n'icyo gufatwaho icyemezo nta gihari kuko nyine ibyo bikoresho byashyikirijwe bene byo, nk'uko biboneka mu nyandikomvugo yo kurangiza urubanza yo ku wa 01/06/2018 n'abahesha b'inkiko. Kuri iyo nyandiko kandi ntihagaragajwe ko hari ibikoresho bitafatiriwe bitabonetse, byarangiritse, byibwe cyangwa byarazimiye. Muri urwo rubanza ahubwo, Nzabonimana Mathias yemezaga ko iyo nzu yakinzwe ntawayinjiramo. [43] Urukiko rusanga ariko n'icyo kibazo cyari kongera gusuzumwa, kitari guhabwa ishingiro kubera ko nk'uko byasobanuwe haruguru, kuba Nkundabanyanga Pierre Celestin yamenyesheje nyir'umutungo ko hazakorwa ifatira mu buryo bukurikije amategeko nk'uko byasobanuwe, umutungo ugafatirwa hari abantu bagasinye, hakakorwa urutonde rw'umutungo ufatiriwe, nta tegeko ritubahirijwe kuko ntahateganywa gukora urutonde rw'umutungo udatiriwe, bikaba byumvikana kuko wo utareba umuhesha w'inkiko, ahubwo nyirawo ni we uba ugomba kuhaba akawitaho, cyangwa agashaka umuhamubera, kuko nyine aba yamenyesheje icyo gikorwa. Muri uru rubanza kandi hasobanuwe uburyo Nzabonimana Mathias atashatse kuhaba, yandikirwa kenshi ngo aje gushaka umuhesha w'inkiko kugira ngo afungurirwe inzu, ntiyabikora. Abo babana na bo ntibashake kwita ku mutungo ufatiriwe, akaba atahindukira ngo inshingano yirengagije asabe ko zari gukorwa n'uwo zitareba, hanyuma abe yazisabira kandi azihererwe indishyi.

5. Kumenya niba umutungo Kurasenge avuga ko ari uwe wafatiriwe bikamutera igihombo byarafashweho icyemezo, kikaba kitasuzumwa [44] Ingingo ya 14 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, isobanura agaciro k'urubanza rwabaye ndakuka. Ingingo ya 258 y'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yakoreshwaga icyo gihe, iteganya ko uvuga ko ibintu byafatiriwe byose cyangwa bimwe muri byo ari ibye,

ashobora kubua kubigurisha, abyandikira Perezida w'Urukiko rwaciye urubanza cyangwa akabivuga mu magambo mu bwanditsi bw'urukiko, bikamenyeshwa uwafatiriye n'uwafitiriwe ibintu n'umukozi ushinze kugurisha ibintu mu cyamunara nibura mbere y'uko igurisha rirangira, kandi akerekana ibimenyete bigaragaza ko ibyo bintu ari ibye; atabikora uko ntibigire agaciro. Mu gihe kitarenze amasaha 28, ashyikiriza ikirego cye Urukiko rw'Ibanze rw'aho icyamunara kigomba kubera hakurikijwe uburyo busanzwe butangwamo ikirego. Izi ngingo zumvikanisha ko uvuga ko umutungo wafatiriwe, bigeye kugurishwa mu cyamunara ari uwe, abimenyeshya urukiko rwaciye urubanza rurangizwa, hanyuma agatanga ikirego mu Rukiko rw'Ibanze, iyo atabikoze, ntibigira agaciro. [45] Ku byerekeranye n'ikirego cya Kurasenge Josephine uvuga ko mu byafatiriwe harimo imitungo ye yafatiriwe (imyambaro ye, amafaranga ye, ibyangombwa bye, impapuro z'umushinga we); Urukiko rwasobanuye ko nta kimenyetso kigaragaza ko yangiwe kujya mu nzu gufata ibintu bye, kuko ifatira ryakozwe ari mu rugo, akaba ataramenyeshye abayobozi bari aho ko hari ibintu bye akeneye gufata kandi nyamara icyo gihe yanagiye mu nzu. Ruvuga kandi ko ku munsu wa cyamunara, Kurasenge yavuze ko hari imitungo ye irimo, cyamunara irasubikwa ngo agaragaze ibintu bye, ahubwo akuramo igikapu, kandi yagombaga kubahiriza ibivugwa mu ngingo ya 268 ya CPCCSA yakoresheje icyo gihe, ku muntu uvuga ko ibintu byafatiriwe ari ibye. Mu mitungo Kurasenge agaragaza ko yafatiriwe kandi ari iye, hanabokemo imitungo Nzabonimana Mathias yaragaragaje ko ari iye, mu rubanza RAD 00098/2018/TGI/NYGE – RAD 00099/2018/TGI/NYGE, ikirego kihutirwa. [46] Kurasenge Josephine yajuririye Urukiko Rukuru, we na Me Theophile, bavuga ko mu rubanza rujuririrwa hirengagijwe ko mu ifatirwa ryo ryakozwe, hafatiwe n'umutungo we, nk'uko bigaragazwa n'inyandiko « to whom it may concern », akaba kandi yaramenyeshye inzego zibifitiye ububasha kuko yaregeye urukiko asaba ko ifatira riteshwa agaciro, kandi cyamunara yagombaga kuba ari uko uru rubanza ruciye mu mizi, hakaba hatari hakenewe kumenyeshya izindi nzego.

## Page 10

- [47] Nkundabanga Pierre Celestin na Me Gahongayire Myriam umwunganira, agahagararira Leta y'u Rwanda, bavuga ko iyi mpamvu nta shingiro ifite, kuko hakorwa ifatira we yari mu rugo, yanga kuvana mu nzu ibintu bye, hakorwa urutonde rw'umutungo wafatiriwe, ahari, ntiyavugaga na nyuma ntiyaregera urwego rubifitiye ububasha. Ku byo kuba ntaho ahuriye n'urubanza rurangizwa, bavuga ko n'ubundi icyaregawe ari ifatira ryakozwe ku wa 21/07/2017 rinyuranyije n'amategeko, atari irangizwa ry'urubanza, kandi ku munsu wa cyamunara ku mutungo wafatiriwe ku wa 08/09/2017, hagamijwe kugurisha umutungo wafatiriwe wa Nzabonimana Mathias, Kurasenge yavuze ko mu mitungo yafatiriwe harimo uwe, cyamunara irasubikwa, mu minsi 6 iteganywa mu ngingo ya 268 ya CPCCSA ntiyagira icyo akora. Bongeraho ko imwe mu mitungo avugaga (intebe zo muri salo, akabati, firigo, akabati, radiyo) byafashweho icyemezo mu rubanza RAD 0074/15/TGI/NYGE, Nzabonimana Mathias yemeye ko ari ye. UKO URUKIKO RUBIBONA [48] Urukiko rusanga nk'uko byasobanuye haruguru ku birebana na Nzabonimana Mathias, ku bikoresheje avugaga ko bitari byafatiriwe, iki kibazo nticyagombaga gusuzumwa kubera ko cyasuzumwe gifatwaho

umwanzuro mu rubanza RAD 00098-00099/2018/TGI/NYGE aho Kurasenge na Nzabonimana Mathias batanze ikirego cyihutirwa basaba gufungurirwa inzu irimo ibikoresho byafatiriwe, kugira ngo bafatemo umutungo udafatiriwe harimo n'ibikenerwa mu buzima bwa buri muni. Urwo rubanza rwararangijwe, Nzabonimana na Kurasenge bafata ibyo bari bemerewe; mu mitungo yatanze habonekamo amavalyise, amasakoshe, n'ibindi; kuri urwo rutonde nta yandi makuru avugwamo ko hari ubuze ibikoresho byafatiriwe, akaba rero nta kindi cyagombwa gusuzumwa ku birebana n'ikibazo. [49] Urukiko rusanga ariko n'iyi byasuzumwa, nta kindi kimenyetso cyashingirwaho mu kwemeza ko hari umutungo we utarabonetse, wibwe cyangwa wonwe, byaba amafaranga, impapuro n'ibindi, kuko iyi biba bityo byari kugaragazwa n'abahesha b'inkiko barangije urubanza, hari na Nkundabanyanga Pierre Celestin wafunguye inzu yarimo ibyafatiriwe n'ibitarafatiriwe. Ku bya kontineri byo, ntakigaragaza ko yarimo umutungo wa Kurasenge, uwo ari wo, ko wazanywe kwa Nzabonimana, ukaba waratakaye, uretse gusa kubivuga. [50] Rusanga kandi nk'uko byasobanuwe mu ngingo y'Itegeko yavuzwe, n'igihe ifatira ryakorwaga, iyi Kurasenge Josephine abona mu mitungo yafatiriwe harangizwa urubanza rutamureba harimo imitungo ye bwite, yagombaga kubimenyesha Urukiko rwacye urubanza rwarangizwaga, hanyuma mu gihe kigenwa muri iyi ngingo agatanga ikirego mu Rukiko rw'Ibanze rubifitiye ububasha, kuba rero bitarakozwe, ibyo aburana nta shingiro byahabwa. Rusanga kandi atari kwitwaza ko hari ikirego yatanze asaba gutesha agaciro ifatira kubera ko we atari umuburanyi muri urwo rubanza rwarangizwaga, ahubwo yari gukoresha iriya nzira y'uvuga ko mu byafatiriwe harimo n'umutungo we bwite. Kuri ibi hiyongeraho ko ifatira ryakozwe ahari, yemererwa kujya mu nzu, akaba ntacyari kumubuza gukuramo nibura amafaranga n'inyandiko. [51] Urukiko rusanga kandi kuvuga ko mu byafatiriwe harimo umutungo we, ntawe yabiryoza kubera ko yemera ko ifatira ryakozwe we ari mu rugo, abaregwa bavugaga ko yasabye kujya mu nzu kandi arabyemererwa ariko ntiyakuramo umutungo avugaga ko ari uwe, urimo amafaranga n'impapuro. Umuhesha w'inkiko aje kugurisha mu cyamunara umutungo wafatiriwe, Kurasenge yavuze ko mu mutungo wafatiriwe harimo umutungo we, cyamunara irasubikwa, nk'uko biboneka muri dosiye, icyo gihe akaba yari gukemura ikibazo cy'umutungo we. Umuhesha w'inkiko kandi yandikiye Nzabonimana ngo akingurirwe inzu kugira ngo bafate umutungo udafatiriwe, Kurasenge akaba yaragombaga na we gusaba ko umutungo we awuhabwa, bitashoboka akanyura muri ya nzira yasobanuwe haruguru. Iyi miburanire kandi ivuguruzwa n'inyandikomvugo y'irangiza ry'urubanza rwavuzwe haruguru. Ibya kontineri na byo bikaba bitakwemezwaga ko yaje,

## Page 11

6. Kumenya ishingiro ry'indishyi zasabwa muri uru rubanza [52] Ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 24/09/2018 ryavuzwe haruguru, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Mu rubanza rwacyiwe n'Urukiko rw'Urukiko rw'Ikirenga1, rusobanura imvugo z'abahanga, ko igikorwa cyose cy'umuntu cyangirije undi, gitegeka

nyir'ukugikora kwishyura ibyangiritse<sup>2</sup>, hemezwamo ko umuntu wese wangirije undi ategewe kwishyura ibyangiritse, uyu abanje kugaragaza ibimenyetso. Ibivugwa mu ngingo isobanuwe haruguru, n'ibivugwa n'abahanga mu mategeko, byumvikanisha ko ugaragaza ko yangirijwe n'ibikorwa by'undi, yishyurwa ibyangiritse. [53] Ku byerekeranye n'indishyi zinyuranye zasabwe n'ababuranyi, Urukiko rwasobanuye ko ku mafaranga y'umurinzi wacungishijwe imitungo yafatiriwe, asabwa na Leta y'u Rwanda atagenwa kuko nta kimenyetso yatangiwe. Leta y'u Rwanda na Nkundabanyanga Pierre Celestin bagenewe 500.000 Frw buri wese, y'igihembo cya avoka. [54] Nzabonimana Mathias yajuririyeye Urukiko Rukuru, we na Me Mugume bavuga ko indishyi zari zikwiye kuko ifatira ryakozwe mu buryo bunyuranyije n'amategako, ajyanwa mu manza nta mpamvu, kandi imwe mu mitungo ye irangirika, iribwa, asaba indishyi z'akababaro zingana na 10.000.000 Frw; 3.000.000 Frw z'ikurikiranarubanza n'igihembo cya avoka ku rwego rwa mbere n'urwa kabiri, 200.000 Frw y'ikurikiranarubanza na 90.000 Frw y'amagarama y'urubanza. Kurasenge Josephine asaba indishyi z'akababaro zingana na 30.000.000 Frw hakanitabwa ku nyandiko z'umushinga we zafungiranwe, umushinga ntubashe gukora, bikaba byarateje igihombo no ku Gihugu. Abaregwa bavuga ko izo ndishyi zidakwiye kuko ifatira ryakozwe mu buryo bukurikije amategako, ahubwo ko ari bo bagenerwa indishyi zo gukomeza gusiragizwa mu manza nta mpamvu. Me Gahongayire Myriam ku ruhande rwa Leta y'u Rwanda, asaba ko yakwishyurwa igihembo cy'ubarindishijwe ibintu byafatiriwe, nk'uko byagaragarijwe ibimenyetso. [55] Urukiko rusanga indishyi zisabwe Nzabonimana Mathias na Kurasenge Josephine n'abunganizi zidakwiye kuko hagaragajwe ko ifatira ritakozwe mu buryo bunyuranyije n'amategako, n'umutungo bavuga ko utafatiriwe hakaba hagaragajwe ko hasobanuwe ko wafashweho icyemezo, urubanza rukarangizwa, byumvikanisha ko bawufashe, kandi unabaye warangiritse, waribwe cyangwa waratakaye, ntawe babiryoza ku mpamvu zasobanuwe. Rusanga kandi n'ubwo mu kirego kihutirwa, cyerekeranye no gufungurirwa inzu ngo bakuremo ibikoresho bitafatiriwe, bitatangirwa indishyi, kuko mu rubanza nyir'izina mu mizi, ikirego kitahawe indishyi, kandi nk'uko byasobanuwe haruguru, bandikiwe kujya kureba umuhesha w'inkiko ngo afungure ntibajyayo, iyo bajyayo ntibayari kuba ngombwa kujya mu nkiko. [56] Urukiko rusanga ahubwo Nzabonimana Mathias akwiye kwishyura Nkundabanyanga Pierre Celestin amafaranga yo gusiragira mu rubanza nta mpamvu, agahabwa 350.000 Frw kuri uru rwego yiyongera ku ndishyi zagenwe mu rubanza rujuririrwa. Akishyura kandi Leta y'u Rwanda amafaranga ibihumbi magana abiri na mirongo itanu (350.000 Frw) y'ikurikiranarubanza n'igihembo cya avoka kuri uru rwego, yiyongera ku ndishyi zagenwe mu rubanza rujuririrwa. [57] Ku zindi ndishyi zisabwe na Leta y'u Rwanda, Urukiko rusanga Nzabonimana Mathias akwiye kwishyura igihembo cy'umubarindishijwe umutungo wafatiriwe, kuva muri Kamena 2017 kugeza mu Kuboza 2021; hishyurwa 50.000 Frw ku kwezi yose hamwe akaba amafaranga miliyoni ebyiri n'ibihumbi magana atandatu na mirongo itandatu na mirongo itanu (650.000 Frw); amafaranga

1 Urubanza RCOMAA 0054/2016/CS rwo ku wa 01/12/2017, haburana APE ISUKU Asbl na Bank of Kigali na Habiyaemye Jean Baptiste. 2 AF Toulet, Dictionnaire des codes français: ou Manuel du droit, Paris, p.433 “Tout fait quelconque de l’homme qui cause un dommage, oblige celui par la faute duquel il est arrivé à le réparer”.

## Page 12

yatanzwe nk'igarama agahwana n'ibyakozwe. Ibyasobanuwe mu rubanza rujuririrwa ko nta kimenyetso kigaragaza ko Uwingeneye Jean Baptiste yishyuwe amafaranga yo gucunga umutungo wafatiriwe, bikaba bivugurujwe n'ibimenyetso biboneka muri dosiye, kandi ntawe ubivuguruza. III. ICYEMEZO CY'URUKIKO [58] Rwemeje ko ikirego cy'ubujurire cyatanzwe Nzabonimana Mathias na Kurasenge Josephine nta shingiro gifite. [59] Rukijije ko urubanza RAD 00137-00138/2017/TGI/NYGE rwaciwe ku wa 29/06/2018 ruhindutse gusa ku ndishyi. [60] Rutegetse Nzabonimana Mathias na Kurasenge Josephine gufatanya kwishyura amafaranga ibihumbi magana atatu na mirongo itanu (350.000 Frw) y'indishyi zishyurwa Nkundabanyanga Pierre Celestin, ku ruhande rumwe na Leta y'u Rwanda ku rundi ruhande, ziyongera ku zagenwe mu rubanza rujuririrwa. [61] Rutegetse kandi Nzabonimana Mathias gufatanya na Kurasenge Josephine kwishyura Leta y'u Rwanda amafaranga miliyoni ebyiri na magana atandatu na mirongo itanu (2.650.000 Frw) yishyuwe Uwingeneye Jean Baptiste uwashinzwe gucunga inzu irimo imitungo yafatiriwe. [62] Rutegetse ko amafaranga Nzabonimana Mathias na Kurasenge Josephine batanze bajurira ahwanye n'ibyakozwe.

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