RCC 10266

AMAJAMBO MAKURU MAKURU

Gusambuza urubanza (ingingo ya 37 y'itegeko n°1/07 ryo kuwa 25/02/2005 rigenga Sentare Ntahinyuzwa) – gutohoza urubanza (ingingo ya 97,100 C.P.C.) - indagano zo gusambuza urubanza zubahirijwe (ingingo ya 5 y'itegeko n°1/07 ryo kuwa 25/02/2005) - ingingo ya 117 gushika kuri 120 za C.P.C. zitubahirijwe (administration des preuves).

URUBANZA

RCC 10266

SENTARE NTAHINYUZWA, IGISATA CA GASAMBURAMANZA, YACIYE URUBANZA RUKURIKIRA : INTAHE Y'ICESE YO KU WA 24/2/05.

UWITWARA: MB. Thérence représenté par Me NZ. Lucie.

UWITWARIRWA : MI. Lyduine représenté par NI. Claude.

Twihweje isambuzwa ry'urubanza RCA 4965 rwaciwe na Sentare Nkuru y'Igihugu ya Ngozi ku wa 2/5/2002 ruvuga ruti :

1. Yakiriye iyunguruzwa ry'urubanza ryagizwe na MB. Thérence ariko isanze ridashemeye na gato ;
2. Ikomeye urubanza RC 3037 rwa Sentare y'Intango ya Ngozi ;
3. Amagarama y'urubanza atangwa na MB. Thérence ;

Twihweje imenyeshwa ry'urwo rubanza kuri MB. Thérence kw'igenekerezo rya 10/6/2002 ;

Twihweje ko urubanza rwakomejwe ruvuga ruti :

1. Yakiriye imburano za MI. Lyduine aserukiwe na NA. Daphrose kandi isanze zishemeye ;
2. Izogaburamwo kubiri kungana itongo ryanditse kuri acte de notoriété n°962hatorane NE.na C. ;
3. Igipande ca NE. co kimwe n'ayandi matongo ya NE. azogaburwamwo ibipande 3 bingana hatorane C., MB. na bashiki babo babiri ;
4. Igipande kizotoranwa n'abo bakobwa ntikizogaburwa, ntikizoragwa canke ngo kigurishwe,C. na MB. bazokigabura abo bagitoranye barapfuye ;

Twihweje imburano zo gusambuza urubanza zatanzwe na MB. Thérence aserukirwa n'umushingwamanza NZ. Lucie azishikana mw'iyandikiro ry'imanza rya Sentare Ntahinyuzwa ku wa 9/8/2002 ;

Twihweje ivyireguro vya MI. Lyduine nawe aserukirwa n'umushingwamanza NI. Claude zashikirijwe Sentare Gasamburamanza ku wa 21/3/2003 ;

Twihweje ivyiyumviro vyatanzwe kur'uru rubanza n'umucamanza wa Sentare Ntahinyuzwa n'umushikirizamanza mukuru wa Parke Nkuru ikukira iyo Sentare ;

Twihweje ishingwa n'ihamagarwa ry'urubanza mu ntahe y'icese yo ku wa 29/3/2004 ; 16/7/2004 na 13/12/2004 ;

Twihweje cane cane iyo sango ya nyuma aho ababuranyi bari bitavye bompi baremera kuburana batafashijwe n'abashingwamanza babo, umushikirizamanza amaze gushikiriza iciyumviro ciwe canditse urubanza ruca ruja mu mwiherero w'abacamanza kugira ngo hashingwe urukurikira ;

Kubera ko uwusambuza urubanza yatanze imburano ziri kumwe n'ikopi y'urwo asambuza indagano zitaramurengana none akwiye kwakirwa ;

Kubera ko MB. Thérence ashikiriza imvo zikurikira :

a. Ko Sentare yaciye urubanza ihutihuti itabanje kurutohoza, ata n'imvo zihagije zatumye irusambura yatanze ;
b. Ko Sentare yarenze ingingo ya 201 na 217 z'igitabu c'amategeko agenga imanza z'amatati ;

Kubera ko ku kirego ca mbere MB. Thérence yagiriza Sentare kuba itihaye umwanya wo gutohoza urubanza, ikaruca ihutihuti bituma ata n'imvo zihagije zo kuruca itanga ;

Kubera ko mu kwunguruza urubanza yari yaneguye uburyo Sentare yagabuyemwo kubiri itongo ryaguze se NE. we nyene akaba no kuri « Acte de Notoriété » uwo Sentare yavuze ko borigabura atanditseko ;

Kubera ko iyo Sentare yemeye imvugo y'uwo bababurana yemeza ko naho atanditse kuriyo « Acte de Notoriété » bafatanije kurigura ;

Ko icabona B. arico coza kibisigura ;

Kubera ko B. yahamagawe gusura akemeza ko iryo tongo ryagabuwe, hakanashingwa n'akarimbi ;

Kubera ko iyo mvugo yaciye inyura Sentare ica irashinga ingingo yemeza ko iryo tongo bariguriye hamwe ;

Kubera ko Sentare Gasamburamanza isomye urubanza rwaciwe isanga koko rufise amahinyu atari make ;

Ko ubwa mbere isanga humvirijwe icabona kimwe ariwe B. kandi Sentare yonyene yaruciye ariyo yivugiye ko ababuranyi barengukanye ivyabona vyabo bagahinyuzanya imbonankubone, ivyo vyabona akaba ataho biboneka ko vyasuye, ako kanenge kakaba katumye ico cabona cemerwa ko casuye ukuri, aho kurondera uwugihinyuza Sentare ica ishingira kuvyo cavuze co nyene ;

Ko ubwa kabiri itongo bapfa rifise "Acte de Notoriété" n'uwuyanditseko ariko Sentare yemeza ko naho biri uko bigaragara ko bafatanije kurigura ;

Kubera ko aha nyene hari ikibazo, inyishu nayo ikaba yategerezwa kuronderwa na Sentare ibanje gutohoza ivy'iyo "Acte de Notoriété", ko yarondewe biciye mu busuma nuko boba bari bumvikanye uwuyandikwako igaheza ikagira ico iyivuzeko ;

Kubera ko Sentare yari kwumviriza ivyabona ikamenya niba ivyo bavuga vyohinyuza urwandiko nk'urwo igaheza igashinga ingingo ifise ifatiro ;

Kubera ko nk'uko uwusambuza urubanza abivuga, urubanza biragaragara ko rutatohojwe bikwiye ari naco gituma ata mvo zishigikira ingingo yafashwe zatanzwe ;

Kubera ko imvo yindi isambuza urubanza yerekeye ko Sentare yaciye urubanza yarenze ku ngingo ya 201 na 217 y'igitabu *ca gatatu* c'amategeko agenga imanza z'amatati mu kwirengagiza urwandiko rwemejwe na Leta arirwo "Acte de Notoriété" ;

Kubera ko nkuko twabivuze aho hejuru imbere yo gushinga ingingo ihushanye n'ivyanditse kur'urwo rwandiko, Sentare yari kubanza gutohoza ikamenya ko hoba harabayemwo ubusuma mu buryo yaronswemwo ikayemeza canke ikayihakana ;

Ko rero mu gihe ivyo bitakozwe, twemera ko n'izo ngingo zitakurikijwe none urubanza rukwiye gusambuka kugira ngo Sentare urubanza rusubijwe isubire kuruburanisha, igire n'itohoza rikwiye, gurtyo urubanza ruronke ingingo ishigikiwe n'imvo zifise ifatiro ;

K U B E R A I Z O M V O Z O S E:

Sentare Ntahinyuzwa, igisata ca Gasamburamanza ;

Yihweje Ibwirizwa Nshingiro Mfatakibanza ;

Yihweje Ibwirizwa n° 1/004 ryo ku wa 14 Nzero 1987 ryerekeye iringanizwa ry'amasentare n'ububasha bwazo ;

Yihweje Itegeko-Bwirizwa n° 1/51 ryo ku wa 23 Mukakaro 1980 ryerekeye isambuzwa n'iburanishwa ry'imanza muri Sentare Ntahinyuzwa ;

Ibanje gushira urubanza mu mwiherero w'abacamanza ababuranyi bompi barengutse ;

Ishinze ko :

- Yakiriye isambuzwa ry'urubanza nkuko ryasabwe na MB. Thérence kandi isanze rishemeye ;
- Irasambuye urubanza RCA 4961 rwaciwe na Sentare Nkuru y'Igihugu ya Ngozi ku wa 2/5/2001
- Irurungikiye iyo Sentare nyene kugira ngo isubire kuruca hashashe abandi bacamanza;
- Iyo ngingo izokwandikwe mu bitabu vy'imanza z'iyo Sentare hambavu y'urubanza rusambuwe ;
- Amagarama atangwa na MI. Lyduine.

Uko niko ruciwe kandi rusomwe i Bujumbura mu ntahe y'icese yo ku wa 24/2/2005, hashashe umukuru w'intahe, abacamanza, bafashijwe n'umushikirizamanza mukuru hamwe n'umwanditsi wa Sentare.

KWIHWEZA URUBANZA

Imbere yo gutangura kwihweza urubanza, twomenyesha ko ingingo zivugwa muri runo rubanza 201 na 217 ari izo mu gitabo ca gatatu c'amategeko agenga amatati.

Amatati avugwa muri runo rubanza yerekeye igabugwa ry'itongo ry'umuheto hamwe n'iry'umuryango. MB. Thérence ntiyigeze ashima igabugwa, ryagizwe na Sentare, ry'itongo ry'umuheto rifise na "acte de notoriété" yanditseko ko nyene itongo ari umuntu umwe ari ko Sentare ikarigaburamwo kabiri ivuga ko bafatanije kurigura.

Mu gusambuza urubanza MB. Thérence aserukiwe n'umushingwamanza NZ. Lucie, avuga ko umucamanza wa Sentare Nkuru y'Igihugu yarenze ku ngingo ya 201 na 217 y'igitabo ca gatatu c'amategeko agenga amatati ndetse ko n'urubanza rwaciwe ihutihuti rudatohojwe neza.

Kukaba nkako, itongo ry'umuheto riburanwa na MI Lyduine aserukiwe na NI Claude muri Sentare Ntahinyuzwa, rirafise "acte de notoriété" yanditse ko nyene itongo, ariwe NE. Sentare y'Intango ndetse na Sentare Nkuru y'Igihugu za Ngozi zafashe imigabo yo guhakana ivyanditswe kuri iyo "acte de notoriété" ziraheza zemeza ko iryo tongo ari irya NE na C.

Ninaco gituma izo Sentare zaciye zishinga ko iryo tongo ryogabugwa mubipande bibiri bingana, kimwe ca NE. Ikindi ca C.

Ingingo ya 201 y'igitabo ca gatatu c'amategeko agenga amatati iremeza ko ivyanditswe kurupapuro (acte authentique) vyemegwa hagati y'abo biraba hamwe n'abasigwa babo.

Vyongeye, ingingo ya 217 y'ico gitabo nyene, ivuga ko igihe hariho ivyemezo vyanditse kandi vyemewe n'amategeko (acte authentique) , ko atamasura ashobora kuza yemeza ibinyuranye n'ivyanditse ngo yemegwe. Ariko, igitabo c'amategeko angenga iburanishwa ry'imanza z'amatati mu ngingo zaco z'117 gushika kw'120 zirategekanya uburyo bukurikizwa imbere ya Sentare mu gihe hariho umuburanyi avuga ko urupapuro rwatanzwe ari urw'ibinyoma.

Sentare ntizigeze zitohoza ngo zimenye ko ivyanditse kuri iyo „acte de notoriété" ari ukuri canke ko ari ibinyoma; ko yoba yarondewe mumakosha canke mbere ko ivyanditseko vyoba vyarahinduwe.

Ibindi twonegura Sentare Nkuru y'Igihugu n'uko mu guhinyuza ivyanditse kuri „acte de notoriété" yafatiye kw'isura imwe yiyobagiza ko" ururimi rw'umwe rukamwa ifyufyu"; Sentare ntiyigeze igira itohoza rihagije, kugirango hamenyekane uwoba avuga ukuri canke abesha mukurondeza ayandi masura yoza ahinyuza uyo yamaze kuvuga.

Ndetse noneho, Sentare Nkuru y'Igihugu ntiyigeze ivuga igituma yemeye imvugo y'umwe mu baburanyi igahakana ivyo uwundi kandi uyu wanyuma ari we yari afise ivyemezo bihwanye n'amategeko.

Sentare Ntahinyuzwa ishashemwo Gasamburamanza yasambuye urwo rubanza hageze kuko Sentare zose ziriho kugira zubahirize amategeko (art.1 loi n°1/07 du 25/2/2005 régissant la cour Suprême). Sentare yarubahirije amategeko ayigenga mugusambura urwo rubanza.