RCC 10705

AMAJAMBO MAKURU MAKURU

Gusambuza urubanza (ingingo ya 37 y'itegeko n°1/07 ryo ku wa 25.02.2005 rigenga Sentare Ntahinyuzwa) - kudakomorerera umuntu umwimbu w'itongo - kugura itongo n'umubembe - kunyagwa (gukomorerwa) itongo na komine - kutitaramura k'umucamanza.

URUBANZA

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RCC 10705

SENTARE NTAHINYUZWA, IGISATA CA GASAMBURAMANZA ISHASHE MU MANZA Z'ABAPFUTWABO YACIYE URUBANZA RUKURIKIRA : INTAHE Y'ICESE YO KU WA 29.05.2006.

UWITWARA: NY. Nathanaël: Umusozi Mugendo, Komine Muhuta, Intara ya Bujumbura Rural.

UWITWARIRWA: BV. Bernard: Umusozi Mugendo, Komine Muhuta, Intara ya Bujumbura Rural.

Twihweje ikete ry'umuburanyi NY. Nathanaël yandikiye Sentare Ntahinyuzwa ku wa 15.05.2003 rigashika mw'iyandikiro ry'imanza kur'uwo munsi nyene ku wa 15.05.2003, ayisaba ko yomusamburira urubanza RCA 0334 rwaciwe na Sentare Nkuru y'Igihugu ya Bujumbura-Rural ku wa 26.02.2003;

Twihweje urubanza RCA 0334 rwavuye muri Sentare Nkuru y'Igihugu ya Bujumbura-Rural ruvuga ruti:

- Irakiriye urubanza RCA 0334 nk'uko yarushikirijwe na BV. Bernard mugabo ivuze ko imburano ziwe ataho zihagaze;
- Urubanza rwaciwe na Sentare y'Intango ya Muhuta ruhinguwe gurtya : NY. aserukirwa na NG. Michel aratsindiye itongo ryose aburana na BV. nk'uko yarigabiwe na Komine Muhuta;
- Amagarama atangwa na BV. Bernard uko ari 10.000 FBu

Twihweje ko urwo rubanza RCA 0334 rwamenyeshejwe NG. Michel yaserukira NY. ku wa 20.03.2003;

Twihweje ko NY. Nathanaël aserukirwa na NG. Michel yashikanye mw'iyandikiro ry'imanza rya Sentare Ntahinyuzwa ikete ryo gusaba gusambuza urubanza ku wa 15.05.2003;

Twihweje ko iryo saba ryo gusambuza urubanza ryamenyeshejwe uwitwariwe BV. Bernard ku wa 22.05.2003 nawe akishura ibirego mu nzandiko yashikirije mw'iyandikiro ry'imanza rya Sentare Ntahinyuzwa ku wa 02.06.2003;

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Twihweje ko BV. Bernard nawe nyene ikete yandikiye Sentare Ntahinyuzwa ryashitse mw'iyandikiro ry'imanza ku wa 19.05.2003 asaba gusambuza kandi urubanza RCA 0334;

Twihweje ko yarumenyeshejwe ku wa 27.03.2003;

Tubonye ko iryo saba ryo gusambuza urubanza ryamenyeshejwe uwitwariwe NY. Nathanaël aserukiwe na NG. Michel ku wa 28.05.2003 nawe akishura ibirego mu nzandiko yashikirije mw'iyandikiro ry'imanza rya Sentare Ntahinyuzwa ; ku wa 26.06.2003 ;

Twihweje ko umushikirizamanza mukuru n'umucamanza batanze iciyumviro n'icegeranyo c'imanza ;

Twihweje ko umukuru wa Sentare Ntahinyuzwa yaciye afata ingingo yo guhamagaza ababuranyi mu ntahe y'icese yo ku wa 01.10.2004;

Twihweje ko ku wa 01.10.2004 ababuranyi bitavye intahe bose urubanza rugasubizwa ku wa 07.02.2005 kugira Sentare Ntahinyuzwa irungikirwe dossier RCA 0334 ya Sentare Nkuru y'Igihugu ya Bujumbura-Rural ;

Twihweje ko ku wa 07.02.2005, Sentare Ntahinyuzwa itaburanishije imanza, urwo rubanza rugasubizwa ku wa 30.05.2005;

Twihweje ko ku wa 30.05.2005, n'ubwo nyene idosiye ya Sentare Nkuru y'Igihugu ya Bujumbura-Rural itari bwashikire Sentare Ntahinyuzwa na none urubanza rugasubizwa ku wa 28.10.2005;

Twihweje ko ku wa 28.10.2005 ufasha kuburana BV. Bernard yamenyesheje mu rwandiko ko arwaye adashobora kuburana, urubanza rugasubizwa ku wa 10.02.2006;

Twihweje ko kw'ihamagarwa ry'urubanza ku wa 10.02.2006, ababuranyi bose bitavye mugabo uwuburanira BV.,

akaba yandikiye Sentare ko adashobora kuburana uwo munsi, urubanza rugasubizwa inyuma ubwa nyuma ku wa 08.05.2006;

Twihweje ko ku wa 08.05.2006 BV. Bernard yari yasivye, NY. akumvirizwa, Sentare igaca ishira urubanza mu mwiherero ;

Twumvise iciyumviro c'umushikirizamanza; Sentare yaciye ishira urubanza mu mwiherero iraheza ishinga urukurikira :

Kubera ko mu gusambuz'urubanza, umuburanyi BV. Bernard atanga imvo zikurikira :

Umukuru w'intahe BK. Michel ntiyashoboye kwikumira kandi azi neza ko ari muramu wa NG. Michel aserukira umuburanyi NY.;

Umukuru w'intahe BK. Michel yarakumiriye abandi bacamanza (assesseurs) yishiriramwo abo yishakiye ;

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Urubanza RCA 0334 ruvuga ngo igihe Komine yaha itongo NY., MY. se wa BV. Bernard yarabona ntihagira ico avuga ngo kandi ngo yari yitavy'Imana mu 1973 ngo ico gihe naho hari mu 1986;

Urubanza RCA 0334 ruvuga ngo iryo tongo NY. yariguze n'umubembe yitwa MS. uwundi mwanya akavuga ngo yarihawe na Komine ;

BV., se MY. na basekuru barimazemwo imyaka 64 ata nkomanzi ;

Kubera ko uwitwariwe NY. Nathanaël aserukiwe na NG. Michel yishura ibirego vya BV. ati itongo NY. amuronderako ubwa mbere yariguze n'umubembe yitwa MS. Rubungura mu 1979, ngo hanyuma Komine irigera kurimunyaga irigabira S. Fidèle ngo ararikurikirana gushika aho Komine Muhuta irimukomorera, ngo S. Fidèle aca ararivamwo ngo aho hari mu 1986;

Kubera ko kuvyerekeye imvo BV. ashikiriza ko BK. Michel, umucamanza wa Sentare y'Intango atikumiriye canke ko yakumiriye abandi baba abacamanza canke abanditsi b'imanza, Sentare Ntahinyuzwa itozihagararako kugira isambure urubanza kuko urubanza rusambuzwa ar'urubanza rwa Sentare Nkuru y'Igihugu ya Bujumbura-Rural, RCA 0334, mur'iyo Sentare y'iyungururizo naho abari mu rubanza rwa Sentare y'Intango bakaba batasubiye kurusasamwo ;

Kubera ko kuvyerekeye imvo yerekeye ko urubanza RCA 0334 ruvuga ko MY. se wa BV. Komine yahaye itongo NY. abona ntihagira ico avuga kandi yari yitavy'Imana mu 1973, nayo nyene atari imvo ikwiye kugira Sentare isambure urubanza, kuko mw'ikopi y'urubanza handitswe ko ari NG. Michel aserukira NY. yabivuze ;

Ko mur'iyo kopi handitswe gurtya: "Kubera ko NG. Michel yavuze ko ico gihe yarisaba kandi akarishikirizwa, MY. se wa BV. Bernard ariho yari, yabona kandi ataco yigeze ayivugako" ;

Kubera ko kandi izo mburano BV. atazishikirije Sentare yaburanishije imburano z'ido n'ido kugira hatohozwe kandi hemezwe ko MY. yari yarapfuye ico gihe kandi no muri Sentare y'Intango bari bavuze ko MY. ariho yari igihe itongo ryagabanwa ;

Kubera ko kuvyerekeye imvo y'ibihushane aho BV. ashikiriza ko urubanza RCA 0334 ruvuga ngo itongo NY. yariguze n'umubembe yitwa MS., uwundi mwanya akavuga ngo yarihawe na Komine, Sentare Ntahinyuzwa ibona ko BV. agomba guhindura uko imburano zimeze, kuko mu mburano havugwa ko itongo ryabanje kugurishwa n'umubembe yitwa MS. mu nyuma rigasabwa Komine ngo kuko amatongo mwen'ayo y'abanyamahanga atagurishwa ngo yaca asubira mu minwe ya Komine iyo bayavuyemwo ;

Kubera ko kubiraba imyaka myinshi BV. yoba amaze muri iryo tongo (prescription) ari ikibazo Sentare Ntahinyuzwa yoshimikira ko mu gusambura urubanza igihe hari ibiboneka nta nkeka ko itongo avuga ko amazemwo imyaka myinshi ari rwiwe ;

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Kubera ko ivyo navyo kugira ibimenye Sentare Ntahinyuzwa yorinda kuburanisha ido n'ido, igisata ca Gasamburamanza akaba atarivyo kijwejwe, igihe noneho mu manza z'ido n'ido havugwa ko itongo ababuranyi bapfa ryahora ari irya MS., atari ivyo umuryango wa BV.;

Kubera ko mu gusambuza urubanza, NY. Nathanaël nawe aserukiwe na NG. Michel, imvo atanga ar'uko Sentare Nkuru y'Igihugu ya Bujumbura-Rural itamukomoreye umwimbu ;

Kubera ko kur'ico kirego, BV. Bernard yishura ko ata mwimbu yigeze aburana muri Sentare Nkuru y'Igihugu ;

Kubera ko mu ntahe y'icese yo ku wa 14.01.2003, NY. bamubajije ico yibagiwe yokwongerako mu rubanza yishuye ati: " Jewe nsaba 3.649.800 FBu aho amaze iminsi ahakorera" ;

Kubera ko mu rubanza n° 1888/94 rwo ku wa 20.12.1995 rwa Sentare y'Intango ya Muhuta mu ngingo yarwo ya 3 ruvuga ruti :

"3. BV. kandi aratsindiwe no kuriha imirima yasoromye atarimye : ibitoke, ikawa, ivoka, igituma ategerejwe kubiriha n'uko yavyihaye ku nguvu, naho NY. yari gutsindwa yari kuronka umuzibukiro. BV. rero aciriwe gutanga 55.000 FBu kuvyo yasoromye mw'itongo rya NY. atarimye…»;

Kubera ko Sentare Nkuru y'Igihugu ya Bujumbura-Rural urubanza rwungururijemwo nayo yaciye urubanza RCA 0334 rwo ku wa 26.02.2003 ruvuga ruti :

- Irakiriye urubanza RCA 0334 nkuko yarushikirijwe na BV. Bernard mugabo ivuze ko imburano ziwe ataho zihagaze;
- Urubanza rwaciwe na Sentare y'Intango ya Muhuta ruhinguwe gurtya : NY. aserukirwa na NG. Michel aratsindiye itongo ryose aburana na BV. nkuko yarigabiwe na Komine Muhuta;
- Amagarama atangwa na BV. ;

Kubera ko mu mvo z'urubanza, Sentare Nkuru y'Igihugu ya Bujumbura-Rural, ata na hamwe yerekanye igituma yakuyemwo ivyerekeye iyo mirima mu guhingura urubanza rwa Sentare ya mbere ;

Kubera ko Sentare y'iyungururizo, hari ingingo canke ibice vy'urubanza bidashemeye itegerezwa kwerekana ivy'arivyo n'igituma bidashemeye kugira ireke kubikomeza canke n'igituma ibihinguye ;

Kubera rero ico ari igituma urubanza rusamburwa ;

KUBERA IZO MVO ZOSE:

Turavye ibwirizwa n° 1/010 ryo ku wa 18.03.2005 ryerekeye Ibwirizwa Nshingiro rya Republika y'Uburundi ;

Turavye ibwirizwa n° 1/07 ryo ku wa 25.02.2005 ryerekeye iringanizwa rya Sentare Ntahinyuzwa ;

Turavye ibwirizwa n° 1/08 ryo ku wa 17.03.2005 ryerekeye iringanizwa ry'amasentare n'ububasha bwazo ;

Turavye ibwirizwa n° 1/010 ryo ku wa 13.05.2004 ryerekeye amategeko agenga imanza z'amatati ;

Sentare Ntahinyuzwa, igisata ca Gasamburamanza,

Icimanza ishimikiye ku nzandiko z'ababuranyi ;

Yumvirije iciyumviro c'umushikirizamanza ;

Iivuye mu mwiherero nk'uko amategeko abivuga ;

ISHINZE KO:

- Yakiriye imburano za BV. Bernard ariko isanze zidashemeye ;
- Yakiriye imburano za NY. kandi isanze zishemeye ;
- Irasambuye urubanza RCA 0334 rwaciwe na Sentare Nkuru y'Igihugu ya Bujumbura-Rural ku wa 26.02.2003;
- Irurungikiye iyo Sentare nyene kugira iruce ukundi gusha hashashe abandi bacamanza ;
- Ivuze ko iyi ngingo yandikwa mu bitabu vy'iyo Sentare, hambavu y'urubanza rusambuwe ;

- Amagarama atangwa na BV. Bernard we atsinzwe nayo ni 11.400 FBu;

Uko niko ruciwe kandi rusomwe i Bujumbura mu ntahe y'icese yo ku wa 31.05.2006.hashashe umukuru w'Intahe, abacamanza bafashijwe n'umushikirizamanza mukuru hamwe n'umwanditsi.

KWIHWEZA URUBANZA

Uru rubanza rwerekeye itongo abantu babiri, uwitwa NY.Nathanaël aserukirwa na NG.Michel n'uwitwa BV. Bernard, bariko baraburanira. Rwahereye imbere ya Sentare y'intango ya Muhuta hanyuma rwungururiza imbere ya Sentare Nkuru y'Igihugu ya Bujumbura Rural hanyuma umwe mu baburanyi yitura Sentare Ntahinyuzwa kugira imusamburire urwari rwaciwe na Sentare Nkuru y'Igihugu ya Bujumbura Rural.

Duhereye k'urwo rwa Sentare Nkuru, rwacitse ruhindura urwa Sentare y'intango hanyuma ruca rukomorera iryo tongo NY. Nathanaël. Ababuranyi bose baciye bitura Sentare Ntahinyuzwa, igisata ca gasamburamanza,

bayisaba gusambura urwo rubanza kubera hariho utunenge barubonako.

Mu mvo zatanzwe, BV.Bernard yavuze ko umukuru w'intahe BK. Michel atitaramuye kandi azi neza ko ari muramu wa NG. Michel aserukira NY. Nathanaël, ko yakumiriye abandi bacamanza akishiriramwo abo yishakiye.

Ko urubanza RCA 0334 rwaciwe na Sentare Nkuru y'igihugu ruvuga ko igihe komine yaha itongo NY., MY. se wa BV. Bernard yarabona ntihagira ico avuga ngo kandi yari yitavye Imana mu mwaka wa 1973 ngo ico gihe naho hari 1986. Ko iryo urwo rubanza nyene ruvuga ngo iryo tongo NY. yariguze n'umubembe yitwa MS., uwundi mwanya akavuga ngo yarihawe na komine; ko BV., se MY. na basekuru barimazemwo imyaka 64 ata nkomanzi.

NY. Nathanaël nawe yatanze imvo imwe yo gusambuza urubanza aho yavuze ko Sentare Nkuru y'Igihugu yamuhaye itongo mugabo ntiyamukomorera umwimbu.

Mu mvo zose zatanzwe, Sentare Ntahinyuzwa yabonye ko iyo yerekeye umwimbu ushemeye, ica ituma urubanza rusambuka rusubizwa imbere ya Sentare Nkuru y'Igihugu ya Bujumbura Rural igizwe n'abandi bacamanza batashashe mu rubanza rwa mbere.

Ababuranyi bose barasavye isamburwa ry'urubanza kandi babisavye mu gihe gitegekanijwe n'amategeko.

Mu mvo zo kunguruza, haravuzwe ikibazo co kutitaramura k'umukuru w'intahe kubera ubucuti afitaniye n'umwe mu baburanyi hamwe n'ico gukumira abandi bacamanza, nta kinini tukivugako kuko bavuze ko ivyo vyabereye muri Sentare y'intango mugabo urubanza rwariko rurasamburwa rukaba ari urwaciriwe muri Sentare Nkuru y'Igihugu. Akaba ata kuntu Sentare Ntahinyuzwa yari kwiga ivy'urubanza itashikirijwe.

Ku vyerekeye ko Sentare yoba yaravuze mu rubanza RCA 0334 ko komine yahaye itongo NY., MY. se wa BV. Bernard abona, Sentare Ntahinyuzwa ntiyaharandiriye naho nyene kuko yasanze atari iciyumviro ca Sentare Nkuru ahubwa ari iciyumviro c'umwe mu baburanyi.

Ku k'ukuntu BV. Bernard avuga ko Nathanaël avuga ingene yaronse itongo hamwe ko yariguze n'umubembe ahandi akavuga ko yarihawe na komine, Sentare Ntahinyuza aho yaravuze ko imburano zitomoye zivuga ko itongo ryabanje kugurirwa n'umubembe hanyuma rigatangwa na komine. Aha rero akaba ata na hamwe biboneka ko Nathanaël yagiye arahindura imburano.

Ku kibazo cerekeye imyaka myinshi BV yoba yari amaze muri iryo tongo (prescription), insiguro yatanzwe na Sentare Ntahinyuzwa ntiyatunyuze. Iyo Sentare ivuga ko ico kibazo cari gutuma urubanza rusambuka mu gihe biboneka ata nkeka ko itongo avuga ko amazemwo imyaka myinshi ari rwiwe.

Uwo mwanya ahubwo wari ukwiye kwigwa kugira biboneke ko vy'ukuri iryo tongo ari rwiwe. Nimba yari arimazemwo imyaka mirongo itandatu n'ine nk'uko abivuga, uwo wundi baburana yoba yaramaze iyo myaka yose ataco amuvugishije ?

Canke uwo avuga ko yari amaze iyo myaka yose yoba yarigenjeje nka nyene itongo canke yoba yarikoreramwo nk'uko barimutijije canke yoba yaramazemwo iyo myaka yose vy'ukuri? Bimaze kugaragara ko itongo ari rwiwe, ntitubona ivyo kwiga umwanya arimazemwo vyoba bigikenewe. Ico kibazo twibaza ko cari gutuma urubanza rusambuka.

Nathanaël nawe yashikirije ikibazo kijanye n'umwimbu Sentare itamukomoreye. Ico kibazo biraboneka ko Sentare Nkuru y'Igihugu ya Bujumbura Rural ataco yakivuzeko kandi uwo muburanyi yari yakiyishikirije.Tukaba tuzi ko Sentare itegerezwa gutanga inyishu (ikabakomorera canke ikabahebuza) ku vyo ababuranyi basavye n'imvo bashikirije zo kubishimangira[1].

Sentare Ntahinyuzwa, igisata ca gasamburamanza, yaciye isambura urubanza kuko Sentare Nkuru y'Igihugu ya Bujumbura Rural yarakomoreye itongo Nathanaël mugabo umwimbu warivuyemwo yari yasavye ntaco yawuvuzeko.

Abacamanza bize runo rubanza barubahirije ibice vyose vy'urubanza. Turabona kandi ko bishuye ku mvo zose ababuranyi babashikirije aho bavuze ko imvo imwe ariyo yari ikwiye kugira urubanza rusambuke mugabo tukaba twabonye ko hari iyindi bari bakwiye kwongerako.

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[1] Art 137 CPC : La motivation doit porter sur chacune des prétentions et chacun des moyens exprimés dans les conclusions des parties[…].