R.C.C. 9934

AMAJAMBO MAKURU MAKURU

Gusambura urubanza – iyimuriro ry'urubanza – guhinyura imburano – icegeranyo c'umucamanza – iciyumviro c'umushikirizamanza – gushira urubanza mu ntahe y'icese – kunyurwa – kugura itongo – gutanga taxe y'ubuguzi – urubanza rufuta ubuguzi – guterera igikumu ubuguzi – umugenzo w'ikirundi – amategeko yerekeye ubuguzi – ibikenewe kugira amasezerano agire inguvu ; ugushaka, ububasha bwo gusezerana n'uwundi, ico amasezerano yerekeye (art 8 C.C.L. III) – amasezerano aciye mu mategeko afise inguvu, ategerezwa kwubahirizwa n'abo yerekeye kiretse bumvikanye kuyasubiramwo (art 33 C.C.L. III) – itegeko ribuza umwe mu bubakanye kugurisha amatungo y'umuryango atabirekuriwe n'uwundi – iyo umwe mu bubakanye atemera ubuguzi afise uburenganzira bwo gufata ico kigurishijwe ntikive murugo (opposition à la vente) – mu kirundi, serugo niwe aserukira umuryango niwe ashobora gufata ingingo yo guteza imbere urugo – kwitiranya ububasha bw'abubakanye – kuguranuzwa haciye imyaka indwi – hakwiye igihe ntabanduka co kwerekana amahinyu yerekeye ubuguzi – Sentare yihindukije mw'ijambo (revirement de sa jurisprudence).

URUBANZA

- 1 -

RCC 9934
SENTARE NTAHINYUZWA ISHASHE MURI GASAMBURAMANZA YACIYE URUBANZA RUKURIKIRA: INTAHE Y'ICESE YO KU WA 31 NZERO 2005.

UWITWARA : IN. Marie aserukirwa n'Umushingwamanza Y. Prime

UWITWARIRWA VY. aserukirwa na ND. Pascal n'umushingwamanza B. Astère.

Hihwejwe ibaruwa ryo ku wa 17/1/2002, umushin-gwamanza Y. Prime, aburanira IN. Marie, yashikirije umukuru wa Sentare Ntahinyuzwa, asaba ko urubanza RCA 693 rwa Sentare Nkuru y'Igihugu ya Cibitoke rusambuka;

Hihwejwe iyimuriro ry'urwo rubanza, rukaba rwavuga ruti:

Sentare ica imanza imbona nkubone

ishinze ko :

- Yakiriye isubirishamwo ry'urubanza RCA 621 ariko isanze ata karusho ;
- Hakomejwe urwo rubanza nyene rwasubirishijwemwo (RCA 621) ;
- Amagarama y'urubanza uko ari 6.480 FBU, atangwa na NZ.

Hihwejwe imburano umushingwamanza B. Astère yashikirije iyi Sentare, ahinyuza izo mburano zo gusambuza urubanza;nkuko zashikirijwe umwanditsi wa Sentare ku wa 04/04/2002 ;

Hihwejwe icegeranyo c'umucamanza wa Sentare Ntahinyuzwa cunganiwe n'iciyumviro c'Umushikirizamanza mukuru akukira iyo Sentare, bahuriza kugushira urubanza mu ntahe y'icese ;

Hihwejwe ingingo y'umukuru wa Sentare Ntahinyuzwa yo guhamagara urubanza mu ntahe y'icese yo ku wa 14/06/2004, agaca ayimenyesha ababuranyi mu kubarungikira umutahe wo kwitaba iyo ntahe y'icese ;
Hihwejwe ihamagarwa ry'urubanza mu ntahe y'icese yo ku wa 14/06/2004, ababuranyi ntibashobore kwitaba bompi;

Hihwejwe ihamagarwa ry'urubanza mu ntahe y'icese yo ku wa 5/11/2004, aho ababuranyi bitavye bose bagashikiriza imburano zabo, Sentare imaze kunyurwa igaca ishira urubanza mu mwiherero w'abacamanza kugira ngo ifate ingingo ikurikira :

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Kubera ko H. André aserukirwa na IN. asambuza urubanza yitwarira itongo yaguze na VY., se wa ND. kw'igenekerezo rya 27/04/1993 ; ku musozi Muyebe, Zone Ndava, Komine Buganda, mu Ntara ya Cibitoke ;

Kubera ko agiheza kugura iryo tongo, H. André yaciye aja muri Zone gutanga itaxe y'ubwo buguzi; nkuko bisabwa n'amategeko ;

Kubera ko urubanza rusambuzwa RCA 693, rwa Sentare Nkuru y'Igihugu ya Cibitoke rwafuse ubwo buguzi, rugategeka IN. gusubiza itongo umuryango wa ND., nawe agaca asubiza amafranga ibihumbi amajana atatu 300.000 FBu yari yaguzwe iryo tongo ;

Kubera ko mu gufata iyo ngingo, Sentare ivuga ko ku rupapuro rw'ubuguzi, yaba umugore canke abana bari

bakuze ba VY., ata n'umwe avugwamwo canke ngo abe yanditswe kugira ngo ashigikire ubwo buguzi mu kubuterera igikumu, ivyo lero ngo bikaba bitajanye n'umugenzo mwiza w'ikirundi;

Kubera ko nyene gusambuza urubanza anegura Sentare ko yaciye urubanza yishimikije umugenzo w'ikirundi kandi amategeko yerekeye ubuguzi ariho, aha akaba avuga ingingo ya 8 na 33 z'igitabo c'imanza z'amatati (code civil);

Kubera ko iyo ngingo ya 8 y'igitabo c'amatati itomora ibikenewe kugira ngo amasezerano agire inguvu, akaba ari ugushaka, kuba ufise ububasha bwo gusezerana n'uwundi; n'ico ayo masezerano yerekeye ;

Kubera kandi ko nyene gusambuza yishimikiza ingingo ya 33, ivuga ko amasezerano aciye mu mategeko afise inguvu nk'izitegeko, ko ategerezwa kwubahirizwa n'abo yerekeye, kiretse bumvikanye kuyasubiramwo ;

Kubera ko aheraheza anegura iyo Sentare ko itashira ahagaragara icatumye ifuta ubuguzi bwabaye hagati ya H. na VY. ;

Kubera ko nyene gusambuza arega kandi Sentare ko yaciye urubanza yisunze ingingo ya 126 y'Itegeko Bwirizwa n° 1/024 ryo ku wa 28/04/1993 ryerekeye ingo n'imiryango, iryo naryo ngo rikaba ritari bwavugwe igihe ubuguzi bwaba, akemeza ko ico gihe, ata tegeko na rimwe ryabuza umwe mu bubakanye kugurisha amatungo y'umuryango atabirekuriwe n'uwundi;

Kubera ko uwitwariwe asubiza ibivugwa kuri iyo mvo ya mbere yo gusambuza urubanza avuga ko nyene gusambuza atokwirengagiza ko ku wa 27/04/1993, amatungo afatiye ku matongo y'abubatse yari atunganijwe n'Itegeko Bwirizwa n° 1/9 ryo ku wa 22/06/1981, rikaba ryahakana ukugurishwa canke gutangwa kw'inzu canke itongo ry'umuryango, abubatse batabigiye inama ngo bavyemere bose n'aho boba bashaka gusohora abana babo ;

Kubera ko urubanza rwo gusambura amasezerano yabaye yerekeye ubuguzi bw'itongo hagati ya VY., se wa ND. na H., umuhungu wa IN.;

Kubera ko nyene gusambuza ashimikira ku ngingo ya 126 y'Itegeko Bwirizwa n° 1/024 ryo ku wa 28/04/1993, ritemera ubuguzi bwerekeye itongo abubakanye batavyumvikanye ;

Kubera ko nkuko bigenda iyo umwe muri abo bubakanye atemera ubuguzi, afise uburenganzira bwo gufata ico kigurishijwe ntikive mu rugo (opposition a la vente), ko muri uru rubanza, Sentare iterekana ico K. yoba yaragize kugira ngo yanke iryo gurishwa ry'itongo, igihe cose yabimenyeye ;

Kubera ko iryo tegeko riterekeye abana canke umuryango, abo ata bwirizwa na rimwe ribarekurira kubuza nyene urugo kwikora kuvyo atunze, igihe ataragirizwa ko asesagura;

Kubera ko mu guca urubanza RCA 693, Sentare Nkuru y'Igihugu ya Cibitoke ivuga ko ku rupapuro rw'ubuguzi aba umugore, canke abana bari bakuze ba VY. ata n'umwe avugwamwo, canke ngo abe yanditswe kugira ngo ashigikire ubwo buguzi mu kubiterako igikumu, ivyo Sentare ikavuga ko bitajanye n'umugenzo mwiza w'ikirundi;

Kubera ko Sentare mu kwemeza ko VY. yagurishije umucance wiwe atavyo azi, biteye kubiri n'ivyo isura NG. na C. bashikirije, bemeza ko ariho yari (yari ku mbuga yicaye imbere y'inzu) ;

Kubera ko uwo mugenzo mwiza uvuga ko abana bakuze ba VY., n'umugore wiwe bari gutera igikumu ku rwandiko rw'ubuguzi Sentare itavuga aho yawukuye, kuko mu kirundi nyene serugo ariwe aserukira umuryango, ko ariwe ashobora gufata ingingo yerekeye guteza imbere urugo ;

Kubera ko Sentare yitiranya ububasha bw'abubakanye, mu gufata ingingo zerekeye amatungo y'urugo, n'imigenzo y'ikirundi itadomako urutoke, arico gituma ata mvo itomoye yishimikije mu guca urubanza ;

Kubera kandi ko Sentare yari gutohoza igihe uwo mugore wa VY. yamenyeye ko itongo ryagurishijwe, kuko bitumvikana ingene umuntu agura, hanyuma haciye imyaka indwi, akaguranuzwa, kandi yari akeneye kubahirizwa, ko hakwiye igihe ntabanduka co kwerekana amahinyu yerekeye ubuguzi nk'ubwo ;

Kubera ko imvo ya kabiri yagiriza Sentare ko yihindukije mw'ijambo (revirement de sa jurisprudence), ngo kuko mu zindi manza zerekeye igurisha ry'amatungo, Sentare zemeje ko ata tegeko na rimwe rirekurira serugo kwikora ku matungo ari mu rugo ; umuryango utabizi ;

Kubera ko uwitwariwe avuga ko imvo ya kabiri yerekeye ido n'ido, agasaba ko itokwihwezwa ;

Kubera ko nkuko uwusambuza abivuga, Sentare zikwiye kutivuguruza kuvyerekeye uwushobora gusaba ko ubuguzi bwerekeye amatungo y'umuryango bufatwa, aho naho Sentare Ntahinyuzwa ikaba yaramaze gufata ingingo ngenderwako, mu rubanza rwa KAB. n'umucance wiwe, bitwarira NDIK. Vincent (R.C.C. 8405) aho

Sentare yavuga ko umugore canke umugabo aribo bo nyene bafise ububasha bwo guhagarika ubuguzi igihe butaraba gusa, ko badashobora kwitwarira uwaguze ngo ubuguzi bufutwe canke ngo amatungo yagurishijwe asubire mu muryango ;

Kubera ko iyo ngingo ya Sentare Ntahinyuzwa ijanye n'ibiri mw'Ibwirizwa n° 1/024 ryo ku wa 28/04/1993, ingingo y' 128 biha uburenganzira umwe mu bubatse guhagarika ingingo ifashwe bidaciye mu mwumvikano, nahone afise igihe gitoyi kugira ngo yiture Sentare ;

Kubera lero ko urwo rubanza RCA 693 rwa Sentare Nkuru y'Igihugu ya Cibitoke, rwosambuka, Sentare ikerekana imvo ijanye n'amategeko yishimikije mu gufuta amasezerano y'ubuguzi bw'itongo yabaye hagati y'ababuranyi;

KUBERA IZO MVO ZOSE

SENTARE NTAHINYUZWA IRIMWO GASAMBURAMANZA;

Yihweje Ibwirizwa n° 1/018 ryo ku wa 20 Gitugutu 2004 ryerekeye Ibwirizwa Nshingiro Mfatakibanza rya Republika y'Uburundi ;

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 nkuko amategeko abivuga,

Ishinze ko :

- Yakiriye imburano za IN., kandi isanze zishemeye;
- Irasambuye urubanza RCA 693 rwa Sentare Nkuru y'Igihugu ya Cibitoke, kandi irurungikiye iyo Sentare nyene ngo iruce bushasha, hashashe abandi bacamanza ;
- Ivuze ko iyi ngingo yandikwa mu gitabu c'imanza c'iyo Sentare, iruhande y'urubanza rusambuwe ;
- Amagarama atangwa na ND., we atsinzwe, nayo ni 14.400 FBu.

Uko niko ruciwe kandi rusomwe i Bujumbura mu ntahe y'icese yo ku wa 31 Nzero 2005, hashashe umukuru w'intahe, abacamanza, bafashijwe n'umushikirizamanza mukuru n'umwanditsi.

KWIHWEZA URUBANZA

Muri runo rubanza umushingwamanza Y. Prime yashikirije Sentare Ntahinyuzwa ngo isambure urubanza RCA 693 rwaciwe na Sentare Nkuru y'Igihugu ya Cibitoke mbere ica igirako irarusambura.

Uyu asambuza urubanza yaguze itongo na se w'uwusamburizwa muri 1993 mbere ubwo nyene aca aranatanga taxe ijanye n'ubwo buguzi. Sentare rero mu rubanza RCA 693 yaciye ifuta ubwo buguzi ngo kubera umuryango w'uwugurisha atariho wari ivyo Sentare ikabifatirako n'umwe mubagize umuryango w'uwugurisha yoba yarateye igikumu. Ivyo Sentare ikavuga ko bitajanye n'umugenzo mwiza w'ikirundi.

Uwiregura nawe aca yishura ati: amategeko yerekeye ubuguzi ariho ari naco gituma atumva ingene Sentare yishimikiza umugenzo n'Itegeko Bwirizwa ryerekeye ingo n'imiryango (iryo naryo rikaba rihakana ukugurishwa canke gutangwa kw'inzu canke itongo ry'umuryango, abubatse batabigiye inama ngo bavyemere bose).

Aha rero umuntu arashobora kwibaza ko Sentare ishobora kwishimikiza umugenzo w'ikirundi itadomyeko urutoke mbere n'aho yowudomako urutoke uburinganire bw'umugenzo w'ikirundi n'itegeko ryanditse. Ikindi naco umuntu yokwibaza n'icoba mu vyukuri kigaragaza ko iyo hari inzu canke itongo rigurishijwe umugabo n'umugore wiwe baba bavyumvikanye ahakana .

Ikindi kibazo twokwibaza n'iki mbega umwe mu bubakanye ahakana ubwo buguzi bwagirishije mugenziwe afise umwanya ungana gute wo kubufata canke abufutishe.

Aha twovuga ko ivyerekeye ubuguzi bigengwa n'igitabo ca gatatu c'amategeko y'amatati na cane cane mu ngingo zaco za 263 gushika ku ya 364. Ayo mategeko rero yanditse arasumba imigenzo ikurikizwa mu Burundi. Aha rero twovuga ko ibiraba igurishwa ry'amatongo y'abubakanye nk'inzu n'itongo vyongera bikagengwa n'ingingo ya 126 y'Itegeko Bwirizwa n°1/024 ryo kuwa 28/04/03 rivuga riti:

"Abubakanye batavyemeranije nta n'umwe muri bo ashobora:
1° kugwatiriza canke kugurisha amatungo y'urugo, inzu canke itongo ryegukira umuryango, ntashobora kandi kwivyegurira abana bavyaranye n'aho boba bagomba gushinga izabo (….)."

Aha ikibazo gihambaye n'umucance w'uwagurishije yamenye ubwo buguzi n'ico yoba yaragize aho abimenyeye. Aha twovuga ko guhera aho ubwo buguzi umucance wiwe abumenyeye, yari afise iminsi mikeyi gusa yo guhagarikasha ubwo buguzi kira noneho bavuga ngo yari kumbuga zaho ayo masezerano y'umugabo wiwe n'uwugura yariko arafundikikwa.

Aha twovuga ko muri Sentare Ntahinyuzwa ishashe mwo Gasamburamanza mubisanzwe batiga ido n'ido ry'urubanza ahubwo baraba itegeko ryoba ryirengagijwe ariryo ryari gukora, itegeko ryatahuwe rikanakoreshwa mu nzira itariyo n'ibindi vyose vyategerezwa gukorwa kandi bihambaye bitakurikijwe canke vyakurikijwe mu buryo butaribwo.

Aha rero muri runo rubanza ikintu twonegura gikomeye Sentare nkuru yaciye urubanza RCA 693, nuko yavuze umugenzo ukurikizwa ntiwudomeko urutoke, mbere twovuga ko yari gukurikiza umugenzo mugihe ihebuye itegeko ryanditse yishimikiza. Ntiyaravye kandi aho umucance w'uwagurishije yamenyeye ubwo buguzi, n'ico yaciye akora aho abimenyeye, canke ko yihindukije ariho yari ari, naho atoba yarateye igikumu ku rwete rw'amasezerano. Ni naco gituma tubona ko ingingo yo gusambura urwo rubanza ishemeye.