URUKIKO RWISUMBUYE RWA NYARUGENGE RURI KU CYICARO CYARWO I NYARUGENGE, RUBURANISHA IMANZA Z'IMBONEZAMUBANO KU RWEGO RWA MBERE, RUCIYE URUBANZA RC 00250/2017/TGI/NYGE MU BURYO BUKURIKIRA NONE KU WA 11/01/2018.

HABURANA

UREGA: MUGISHA Reuben utuye mu mudugudu wa Kanserege, akagari ka Kamutwa, umurenge wa Kacyiru, akarere ka Gasabo, umujyi wa Kigali.

UREGWA: BIKAMBA Mathilde utuye mu mudugudu w'Ituze, akagari ka Kamukina, umurenge wa Kimihurura, akarere ka Gasabo, umujyi wa Kigali.

IKIBURANWA: Gusesa amasezerano y'ubugure bw'ikibanza gifite UPI 1717 no gutegeka uregwa gusubiza amafaranga y'ikiguzi angana na 40.000.000frw yakiriye cyangwa amasezerano akaguma agaciro uregwa agasubiza ½.

URUKIKO

I. **IMITERERE Y'URUBANZA**

[1] MUGISHA Reuben yareze BIKAMBA Mathilde asaba ko amasezerano y'ubugure bw'ikibanza UPI 1717 aseswa agasubizwa ikiguzi kingana na 40.000.0000frw cyangwa akagumaho ariko agasubizwa kimwe cya kabiri cy'ikiguzi. MUGISHA Reuben asobanura ko BIKAMBA Mathilde amugurisha yiranze kumubwira ubuso bw'ikibanza baguze, arahamwereka gusa, maze ashyiramo n'ikibanza cya MASUMBUKO wari umugabo we batandukanye, bakagabana ikibanza mo kabiri, akaba yaramenye ko aho yeretswe hose atari mwa BIKAMBA ari uko agiye gutunganya ikibanza, Masubmbuko akamuhagarika abimubwira, yahamagara BIKMBA, ntaze ngo bumvikane.

[2] Mbere yo kwiregura mu mizi y'urubanza, BIKAMBA Mathilde asaba ko ikirego cya MUGISHA kitakirwa kubera ko mbere yo kumurega mu Rukiko atabanje kumwegera ngo bumvikane nk'uko babyemeranyijwe mu masezerano, ahubwo aho gushaka ubwumvikane akaba yaragiye kumurega mu bushinjacyaha. Urukiko rusanga iyo nzitizi nta shingiro ifite, rwemeza ko ikirego cyakirwa.

[4] Mu kwiregura mu mizi y'urubanza, Bikamba Mathilde avuga ko mbere yo kugura na MUGISHA Reuben, bahuye akamwereka ibyangombwa

by'ubutaka birimo amasezerano y'ubukode burambye, icyemezo cy'iyandikisha ry'ubukode bw'igihe kirekire hamwe na fiche cadastrale, anamujyana kuri terrain buri ruhande rufite nibura abantu babiri, barahazenguruka amwereka ikibanza cye hamwe n'imbibi zitandukanya parcelle ye n'iy'uwahoze ari umugabo we ari we Me Masumbuko, amubwira ko igiciro ari 50.000.000 frw, batandukana, Mugisha avuga ko agiye kubanza kubivuganaho n'umugore we, hashize umwanya arahamagara, amubaza aho ageze, amusaba ko bongera kubonana kugira ngo bafate icyemezo cya nyuma, barongera barahura, bumvikana ko igiciro cya parcelle ari 40.000.000 frw, amwishyura 20.000.000 frw cash anamuha imodoka ya occasion Land cruser na yo ifite agaciro ka 20.000.000 frw. Bikamba akomeza asobanura ko nyuma yo kugura bakoranye ihererekanya ry'ubutaka (mutation) bwaguzwe, buva mu mazina ye bwandikwa ku mazina ya Mugisha Reuben, ibyo byarakozwe nkuko bisanzwe bigenda, akaba asanga nta mpamvu n'imwe Mugisha Reuben afite ituma amurega, asaba ko ikirego giteshwa agaciro, akanahabwa indishyi zo gushorwa mu manza bitari ngombwa.

[5] Muri uru rubanza harasuzumwa niba amasezerano y'ubugure bw'ikibanza hagati ya Mugisha Reuben na Mathilde Bikamba agomba guseswa cyangwa yagumana agaciro ariko igiciro cyatanzwe kigabanywamo kabiri, hanasuzumwa ikibazo cy'indishyi, igihembo cy'avoka n'ikurikiranarubanza.

II. **ISESENGURA RY'IBIBAZO BIRI MU RUBANZA**

1. ***Ku kibazo cyo kumenya niba amasezerano y'ubugure bw'ikibanza hagati ya Mugisha Reuben na Mathilde Bikamba agomba guseswa cyangwa yagumana agaciro ariko igiciro cyatanzwe kigabanywamo kabiri.***

[6] Mu mwanzuro, Mugisha asobanura ko kuri terrain, Bikamba Mathilde yagaragaje aho ikibanza N°1717 gihera n'aho kirangira, nyamara azi neza ko igice kimwe ari umutungo wa Me Masumbuko Emile, ko kubera kugaragaza igice cy'umutungo utari uwe byatumye atamenya ukuri, kandi Bikamba Mathilde akaba yarabikoze yabigambiriye, ko ibyo bigaragazwa n'uko Fiche cadastrale yagaragajwe iterekanaga ubuso bw'ubutaka, ndetse n'amasezerano y'ubugure yateguwe na Didier Mpata hamwe na Bikamba Mathilde birinze gushyiramo ubuso bw'ubutaka, bituma agura atamenya ukuri k'ubuso bw'ikibanza, ko kubera uko kubeshwa, byatumye Masumbuko agaragaza ukuri ndetse, agaragaza ko ubutaka Bikamaba Mathilde yerekanye harimo igice kimwe cy'umutungo we cyahawe UPI 1718. Mugisha avuga ko kubera izo mpamvu asaba urukiko ko rwategeka ko amasezerano aseswa maze uregwa agasubiza ikiguzi cyose yakiriye kingana

na 40.000.000frw kuko iyo aza kuvugisha ukuri, yari kugura ku giciro gito cyangwa agahitamo kutagura, akaba asanga amasezerano agomba guseswa kuko habayeho vice de consentement kuko Bikamba Mathilde yagaragaje ko ubutaka yagurishije bwose ari ubwe nyamara azi neza ko igice kimwe ari umutungo wa Me Masumbuko Nde Emile. Ku rundi ruhande Mugisha akanavuga ko mu gihe amasezerano yaba adasheshwe, yakubahirizwa ariko Bikamba agategekwa kumusubiza kimwe cya kabiri cy'ikiguzi gihwanye na 20.000.000frw.

[7] Mu iburanisha, MUGISHA Reuben avuga ko impamvu yumva amasezerano yaseswa ari uko yashutswe na Mathilde akamwereka ikibanza afatanije n'umugobo we akanamwereka na certificat ya divorce ko bagabanye ikibanza ari icye, kandi yamusaba kubonana n'umugabo we, n'umuyobozi w'umudugudu akamubwira ko yakora enquête ko yatandukanye n'umugabo we nabi adashaka kumubona, kandi hari ikindi kibanza yari agiye kugura gifite clôture ariko cyanganaga n'icyo Mathilde yamweretse ariko kuko yari amukuriyeho 10.000.000frw areka kugura ikindi cya 50.000.000frw, atangiye kubaka amenya ukuri, akaba asaba urukiko gusubizwa amafaranga ye, akamusubiza ubutaka bwe, bitaba ibyo agasubizwa kimwe cya kabiri cy'ikiguzi yishyuye.

[8] Me NIYONDORA NSENGIYUMVA avuga ko impamvu Mugisha asaba ko amasezerano aseswa ari uko uwamugurishije yagaragaje ibintu uko bitari, bikaba bihura n'ingingo ya 52 na 54 z'itegeko ry'amasezerano kuko Mathilde afite UPI 1717 ariko kuri terain akaba yarerekanye ikibanza azi neza ko harimo ibibanza bibiri kuko amaze gutandukana n'umugabo we bakigabanye kandi amasezerano atagaragaza ubuso bw'ubutaka baguze, ko ikindi kimenyetso ari umutangabuhamya wabajijwe witwa UWIRAGIYE wagaragaje ko mu gihe bari batangiye kubaka ariho havutse ikibazo, kandi ibigaragara na Mathilde atari azi neza ubutaka bwe kuko yabajije umukozi uko babigabanye, ko na MUGEMA yabajijwe mu bugenzacyaha arabisobara neza ko icyo gihe yaberekaga ko ikibanza gihera ku gipangu cya Masumbuko kikagera ku gipangu cy'imiyenzi, ko kandi Mugisha yari yaguze ikobanza cy'uwitwa Uwayezu gifite ubuso 2.589 kandi ikibanza gifite UPI :1717 gifite ubuso bwa 1.200 akaba yaremeye kukigura akareka icya mbere kuko BIKAMBA yamwerekaga ko gifatanye n'ikindi, ibintu rero bikaba byaragaragajwe uko bitari, ko indi mpamvu yatumye BIKAMBA abikora ari uko yari azi ko ari umuntu wihuta kuko yari afite ticket y'indege atarayisubika bityo akaba yaramufatanije no kwihuta.

[9] Me MUNYAMAHORO avuga ko impamvu Mugisha asaba ko amasezerano yaseswa ari impamvu zishingiye ku mategeko aho bigararaga ko yakozwe mu buriganya ukurikije imiterere y'ibi bibanza kuko byoroshye kubeshya umuntu akaba yabyibeshyaho, ko Mugisha agura banweretse ikibanza 1717

na 1718 nyuma ya mutation agiye gushaka cya kibanza yagurishijwe asanga ari gito cyane ku cyo yaguze, ko ashingiye ku ngingo ya 276 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko ubugure bw'ikintu cy'undi ari ipfabusa asaba ko aya masezerano yaseswa akaba yategekwa gusubiza ikibanza nawe agahabwa amafaranga y'ikiguzi.

[10] Bikamba mu mwanzuro asobanura ko ibivugwa na Mugisha Reuben ari ikinyoma kuko mbere y'uko amasezerano akorwa yabanje kwerekwa icyangombwa cy'ubutaka kigizwe na page 3 harimo amasezerano y'ubukode burambye, icyemezo cy'iyandikisha ry'ubutaka hamwe na fiche cadastrale, akaba yarabonye ubuso bw'ubutaka, ko amaze kubona ibyangombwa bahise bajyana kuri terrain, yerekwa imbibi z'ubutaka ashaka kugura bufite N°1717 n'aho bugabanira n'ubwa Masumbuko bufite N°1718, akaba yaraguze ubutaka azi neza ubuso bwabwo bitewe n'uko yari afite icyangombwa kandi yarabutambagijwemo mbere yo gufata icyemezo cyo gukora amasezerano.

[11] Me RUGAMBAGE Albert avuga ko ibisabwa na Mugisha ndetse n'abamwunganira nta gaciro byahabwa kuko yatangiye avuga ko Mathilde yamushutse ariko kiriya kibanza atari yakigurisha cyari icye 100%, ko ngo plan cadastral ngo yamweretse idafite ubuso ibyo ari ukubeshya kuko Mathilde atuye muri Canada, Mugisha we atuye muri Suède bakaba bafite umuntu wabahuje amaze kumenya ko Mugisha akeneye ikibanza kandi azi neza ko na Bikamba afite ikibanza agurisha, ko bahuye BIKAMBA yamweretse photocopie y'icyangombwa cy'ubutaka kandi icyangombwa cy'ubutaka atari plan cadastrale, ko uwaciye ku rubibi yitwa Mpata didier kuko Mathilde atari kuzenguruka iki kibanza kubera ko acumbagira, Mugisha akaba yari afite ibyangombwa bitatu : amasezerano y'ubukode burambye, icyemezo cy'iyandikosha ry'ubutaka ku buryo burambye, na plan cadastral byanditsweho 100% ko ari ibya Bikamba, Mugisha rero atari kugura atazi ubuso bw'ubutaka kandi asobanukiwe ntacyo ayobewe. Me Rugambage akomeza avuga ko urega avuga ko ugurisha yagaragaje ikintu uko kitari ariko ari ukubeshya kuko ubutaka bw'u Rwanda bwanditse, kandi ko amasezerano ahari kandi asobanutse nta nyandiko yo kwandikamo amasezerano iteganijwe mu mategeko, ko bamaze kumvikana ibiciro umwe yamubwiye 50.000.000frw undi amubwira 40.000.000frw, ko Mugisha amaze kuvugana n'umugore we yaje kongera kumuhamagara baremeranywa, yishyura 40.000.000frw, bajya kwa notarie w'ubutaka, barahinduza, nyuma hashize igihe gito ubutaka bwavuye mu mazina ya Mathilda akaba asanga nta mpamvu yo gusesa amasezerano.

[12] Urukiko rusanga mu gutanga ibisobanuro, Me Masumbuko Emile avuga ko ikibanza cye n'icya Bikamba bitandukanywa n'imiyenzi iromo hagati kuko mbere cyari ikibanza kimwe, nyuma ya divorce barakigabana,

buri wese akaba afite ifishi ye, ko nyuma y'uko Bikamba agiranye ibibazo n'uwo baguze na we yamugurishije ahe, kandi ko bari batemye ibiti bye byari birimo ariko ko nta myaka y'abaturage yari irimo.

[13] Urukiko rusanga umutangabuhamya MPATA Didier avuga ko Bikamba agurisha Mugisha, ku munsi wa mbere yari ahari ari we utwaye Bikamba, ko Bikamba yereka Mugisha ikibanza, bari munsi yacyo, aba ari we ukimwereka kuko Bikamba atabashaga kuva mu modoka, akaba atarigeze amwereka icya Masumbuko kuko bigabanijwe n'imiyenzi, kandi ko Bikamba yanamweretse ibyangombwa by'ubutaka.

[14] Urukiko rusanga umutangabuhamya BIKAMBA Ismael avuga ko Bikamba na Mugisha bagura ikibanza yari ahari kandi ko bajyanye mu modoka, bahageze basaba umuzamu ko akibereka, barakizenguruka, ko ikibanza cya Masumbuko n'icya Mathilde bitandukanijwe n'imiyenzi, ariko ko atibuka imyaka yari ihinzemo.

[15] Urukiko rumaze kumva umutangabuhamya NDAHIRO Joel avuga ko Bikamba na Mugisha bagura, yasinye gusa ku masezerano y'ubugure abisabwe na Mugisha ariko ko ikibanza cyagurishijwe yacyeretswe na Mugisha ari bo bombi gusa, amubwira ko gitangirira ku miyenzi kugera ku rupangu rwa ruriba kandi ko Masumbuko atuye hafi y'aho, ko hagati y'ibyo bibanza harimo ibiti bya gereveriya, imyembe ukabona hari nk'ibiti by'ishyamba, bukeye agiye kujya ku kazi, Mugisha amuhamagara amusaba ko bahurira kuri Ninzi Hotel bagasinya, nyuma bajya kwa kwa notaire.

[16] Urukiko rusanga umutangabuhamya TWIZEYIMANA Jean avuga ko Bikamba na Mugisha bagura yari mu kazi, bamuhamagara bamubwira ngo abasange kuri Ninzi Hotel abasinyire, nyuma yo gusinya bajya ku kibanza barakibereka, kikaba cyarazamukaga kugera ku gipangu cya Ruliba, kizengurutswe n'imiyenzi, hagati harimo ibiti bya gereveriya, avuga ko Bikamba yababwiye ko ahana imbibi na Stella Foda ahandi ari umuhanda wa kaburimbo, bahita bajya kwa notaire, abajije Mugisha niba hari copie y'icyangombwa yamuhaye, Bikamba amubwira ko icyangombwa kiri kwa notaire ko azakibona nyuma yo kucyandikaho amazina ye, ko rero basinya amasezerano y'ubugure nta cyangombwa babonye.

[17] Urukiko rusanga ingingo ya 52 y'itegeko N°45/2011 ryo ku wa 25/11/2011 rigena amasezerano iteganya ko : « **Kugaragaza ibintu uko bitari bifatwa nko kuyobya urundi ruhande iyo bitumye urwo ruhande rubishingiraho kugira ngo rufate icyemezo cyo gukora amasezerano.**» n'ahoiya 54 yaryo iteganya ko : « **Iyo uruhande rwemeye amasezerano rushingiye ku byo rwagaragarijwe n'urundi ruhande bitari ukuri rushobora gusaba gutesha agaciro ayo masezerano.** »

[18] Urukiko rusanga ibyo MUGISHA Reuben avuga ko Bikamba Mathilde amugurisha ikibanza UPI 1717 yamubeshye, amwereka icyangombwa kitariho ubuso, maze amwereka ikibanza ashyiramo n'icya Me Masumbuko Emile gifite UPI 1718 wahoze ari umugabo we kuko byari byegeranye, bituma ikiguzi kiba miriyoni mirongo ine (40.000.000frw) kandi ikibanza UPI 1717 yamugurishije kidakwiranye n'icyo kiguzi, akaba yaragaragaje ibintu uko bitari nta shingiro bifite kuko :

- Mu masezerano y'ubugure bashyizemo nimero y'ikibanza n'aho ibyo MUGISHA avuga ko yeretswe icyangombwa kidafite ubuso, kiriho nimero y'ikibanza gusa nta gaciro byahabwa kuko uretse ko atagaragaze icyo cyangombwa kidafite ubuso bw'ubutaka yeretswe hashingiwe ku ngingo ya 9 y'itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imaza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kandi nawe mu gukora amasezerano y'ubugure bw'ubutaka yari kuba yaragize ubushishozi bwo gusaba ibyangombwa byose by'ubutaka mbere yo gusinya amasezerano y'ubugure kugira ngo abone ko uwo bagura ubutaka ari nyirabwo kandi ko aho yamweretse ari ho amugurishije koko, dore ko ibyo byangombwa ari byo bigaragaza nyiri ubutaka hashingiwe ku ngingo ya 4al1 y'itegeka rya minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa iteganya ko: "**Umutungo bwite w'ubutaka n'ubukode burambye bw'ubutaka bigaragazwa ku buryo bwemewe n'amategeko n'icyemezo cy'iyandikisha ry'uburenganzira ku butaka gishingiye ku rupapuro rwemewe cyangwa rwatanzwe na Leta.**" kandi buri muyarwanda agomba kuba azi imiterere y'ibyangombwa by'ubutaka nk'uko bigaragazwa ku mugereka w'iteka rya minisitiri rimaze kuvugwa kandi nta munyarwanda wavuga ko atazi ibiteganijwe mu mategeko akoreshwa mu gihugu, kandi yaratangajwe mu buryo bukurikije amategeko nk'uko biteganijwe mu ngingo ya 176 y'itegeko nshinga rya Repubulika y'u Rwanda ryo ku wa 03/06/2003 nk'uko ryavuguruwe kandi ryujujwe kugeza ubu iteganya ko : « **Ntawe ushobora kwitwaza ko atazi itegeko iyo ryatangajwe mu buryo buteganywa n'amategeko.** »

- Mugisha avuga ko Bikamba yamubwiye ko yatandukanye na Me Masumbuko banagabana imitungo, ariko ntagaragaza icyatumye adakora ubushakashatsi ku butaka Bikamba amugurisha, ngo abe yaranegereye Masumbuko cyangwa inzego z'ibanze kugira ngo abaze ibijyanye n'ubutaka Bikamba ari gushaka kumugurisha cyane ko Masumbuko atuye hafi y'ikibanza yaguze, baranamweretse igipangu cye hashingiwe ku ngingo ya 108 y'itegeko N°15/2004 ryoku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

- Masumbuko atanga ibisobanuro kimwe n'abatangabuhamya Mpata Didier na Bikamba Ismael babazwa n'Urukiko bose bemeza ko ikibanza Bikamba

yagurishije gitandukanywa n'icya Masembuko n'imiyenzi iri hagati, ariko Mugisha ntagaraza undi bari kumwe bamwereka ikibanza wakwemeza ko batamweretse ko kigarukira kuri iyo miyenzi igitandukanya n'icya Me Musumbuko hashingiwe ku ngigo ya 65 na 108 z'itegeko N°15/2004 ryavuzwe haruguru dore ko NDAHIRO Joel wamusinyiye nk'umugabo ku masezerano, avuga ko yeretswe ikibanza na Mugisha ari bo bombi ibyo avuga bitagaragaza uburiganya bwa Bikamba kuko atagaragaza ko mu gihe Bikamba yerekaga Mugisha ikibanza yaba yari ahari ngo avuguruze ibivugwa n'abagabo basinyiye Bikamba ku masezerano y'ubugure kandi bavuga ko bari bahari Bikamba yereka Mugisha ikibanza ndetse Didier avuga ko ari nawe wacyerekanye hashingiwe ku ngingo ya 65 y'itegeko N°15/2004 imaze kuvugwa. Byongeye kandi TWIZEYIMANA Jean nawe wasinyiye Mugisha ku masezerano y'ubugure avuga ko nyuma yo gusinya basubiye kureba ikibanza, ntavuge imiyenzi ivugwa na Masumbuko na Mpata na Bikamba Ismael, ahubwo nawe ibyo avuga ko yabajije Mugisha niba yabonye ibyangombwa by'ikibanza, akamusubiza ko atabibonye nyamara Mugisha aburana avuga ko yeretswe ibyangombwa bidafite ubuso bituma izo mvugo ze zitahabwa agaciro hashingiwe ku ngingo ya 65 y'itegeko N°15/2004 rimaze kuvugwa kuko zivuguruza ibyo urega ashingiraho arega Bikamba uburiganya avuga ko yabonye ibyangobwa by'ubutaka bitagira ubuso bw'ikibanza kandi ari we wamusinyiye ku masezerano y'ubugure nk'umugabo.

- Mugisha avuga ko mutation yakozwe adahari nyamara abatangabuhamya bamusinyiye ku masezerano y'ubugure bavuga ko bahise bajya kwa notaire nk'uko bisobanurwa na TWIZEYIMANA Jean na NDAHIRO Joel nk'uko binagaragazwa n'amasezerano y'ubugure yashyize muri dosiye, nyamara kuba yaramaze kugura akajyana amasezerano kwa notaire, akabwemeza kandi harimo ko aguze ikibanza kiri mu kagari ka Kamukina, umurenge wa Kimihurura, mu karere ka gasabo gifite nimero UPI 1/02/08/1717 ari uko yemeje ko aguze ikibanza gifite ubuso buri ku byangombwa bifite nimero yagaragaje, kandi ayo masezerano ari yo yakoreshejwe kwa notaire w'ubutaka bakora ihererekanya. Aha n'aho Mugisha akaba atagaragaza impamvu yahisemo gukora ubugure, agahita ajyana amasezerano y'ubugure kwa notaire, aho guhita bajya ku mubitsi w'inyandiko mpamo z'ubutaka ngo na mutation ihite ikorwa nk'uko biteganywa mu ngingo ya 34 y'iteka rya rya minisitiri N° 002/2008 ryavuzwe haruguru.

- Avuga ko yafotoye ikibanza yeretswe, akabona nta gitandukanya ikibanza cya Masumbuko n'icya Bikamba nyamara ayo amafoto agaragaza atari Bikamba wayafotoye cyangwa uwo Bikamba yatumye, byongeye kandi ayo mafoto atagaragaza ko hagati y'ibyo bibanza byombi nta miyenzi iteyemo ibigabanya, byongeye kandi uretse ko ari nawe ubwe wayifatiye nta

cyagaragaza ko ayo mafoto ari umwerere hashingiwe ku ngingo ya 3, 108, 123, 124 na 125 z'itegeko N°15/2004 ryavuzwe haruguru.

- Mugisha nta garagaza ikindi ashingiraho kigaragaza ko kuba yaraguze ikibanza cya Bikamba kuri 40.000.000frw yahenzwe uretse kuba avuga ko yaretse kugura ikindi kijya kungana na cyo wongeyeho icya Masumbuko, nyamara hagati aho yaraguriye na Masumbuko ikibanza gifite nimero UPI 1/02/08/1718 avuga ko yari yaguze gifatanye n'icyo yaguze na Bikamba, kandi nta kindi gipimo cyo guhemdwa aheraho uretse kugereranya icyo yari agiye kugura n'icyo yaguze na Bikamba gifite nimero UPI 1/02/08/1717 kandi ubugure buba bwuzuye hagati y'ugura n'ugurisha iyo habaye kumvikana hagati y'ikintu n'ikiguzi nkuko biteganijwe mu ngingo ya 264 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko : « **Igurisha riba ryuzuye hagati y'abagiranye amasezerano kandi umugurisha akegurira burundu umuguzi icyagurishijwe mu gihe bumvikanye ku kintu no ku giciro cyacyo n'ubwo ikigurishwa cyaba kitari cyatangwa n'ikiguzi cyacyo kikaba kitari cyishyurwa.** ».

[19] Urukiko rusanga mu kwanzura, Mugisha atarashoboye kugaragaza uburiganya yagiriwe na Bikamba Mathilde nkuko busobanuye mu ngingo ya 52 y'itegeko N°45/2011 ryavuzwe haruguru nk'uko bisobanuye haruguru kuko atagaragaza ikimenyetso ashingiraho agaragaza uburiganya yagiriwe, bityo hatashingirwa ku ngingo ya 54 y'iryo tegeko ngo amasezerano y'ubugure bagiranye aseswe cyangwa ngo Bikamba Mathilde ategekwe gutanga kimwe cya kabiri cy'ikiguzi nk'uko Mugisha abisaba. N'aho inyandiko z'abahanga Mugisha n'abamwunganira bashingiraho bavuga ko habayeho uburiganya (lésion) nta shingiro zahabwa mu gihe Mugisha atagaragazwa uburyo Bikamba yamubeshye akagura icyo atagombaga kugura, agatanga igiciro kidakwiranye n'icyo aguze kandi nawe hari ibyo yagombaga kubanza kubona atashyizeho umwete nko kubanza kumenya niba ikibanza yeretswe gihura n'ibyangobwa byacyo nk'uko byasobanuwe haruguru, kandi ariwe ugura mu gihe ku rubuga https://fr.wikipedia.org/wiki/L%C3%A9sion_en_droit_civil_fran%C3%A7ais rwasuwe ku wa 11/01/2018 saa yine abahanga bagaragaza ko lesion irebwa ku ruhande rw'uwagurishije gusa agaragaza ko yahawe ikiguzi kidahura n'agaciro k'icyagurushijwe aho bagira bati : « **La lésion ne concerne que les ventes d'immeubles, la vente d'engrais, la cession des droits d'auteur et la vente de produit agricole et de pêche en situation de crise conjoncturelle. Elle n'est pas possible en dehors de ces cas. Elle ne s'apprécie qu'au moment de la conclusion du contrat. Seul le vendeur peut s'en prévaloir. Il dispose d'un délai de 2 ans pour agir** » kandi bavuga ko lésion itandukanye na **prix délisoire** (gutanga ikiguzi kidakwiye icyagurishijwe) kuko bavuga ko lésion ari : « **En droit français, la lésion est le préjudice qu'éprouve une partie dans un contrat ou dans un partage.**

En droit privé la lésion est un important défaut d'équivalence entre les prestations des parties au moment de la conclusion du contrat. C'est un déséquilibre financier entre les prestations. ». ibyo kandi ari nako bisobanurwa n'abahanga *Jacques FLOUR, Jean Luc AUBERT NA Eric SAVAUX* mu gitabo : *Droit Civil, LES OBLIGATIONS : 1. L'acte juridique, 12eme édition, page 191*, aho bavuga ngo : « **La lésion est le préjudice résultant, pour l'un des parties au contrant d'un défaut d'équivalence entre l'avantage qu'elle obtient et le sacrifice qu'elle consent. Un vendeur est lésé s'il vent trop bon marché, un acheteur s'il paie trop cher. ……** ». Mu gihe Mugisha nk'uwaguze, atagaragaza ibimenyetso by'uko yagurishijwe ku giciro kinini anagaragaza amakosa y'uwamugurishije yatumye agura atabanje kugira ubucukumbuzi n'ubushishozi kandi avuga ko yeretswe ikibanza, akagishima, ntabe yarashatse kugura abanje kubona niba ikibanza yeretswe, ari cyo kiri ku byangobwa by'ubutaka, biba ari impapuro mpamo zigaragaza nyiri ikibanza n'ingano yacyo nk'uko biteganijwe n'amategeko kandi Bikamba wamugurishije yemeza ko yamweretse ibyangombwa by'ubutaka mbere yo kumugurisha, akaba yaranamukoreye ihererekanya, na numero z'ikibanza zigaragara mu masezerano y'ubugure nk'uko byasobanuye haruguru. Bityo rero ibyo Mugisha asaba ko amasezerano y'ubugure yagiranye na Bikamba Mathilde ku wa 02 Ugushyingo 2016 yaseswa agasubiswa ikiguzi yatanze, cyangwa akagumishwaho, agahabwa kimwe cya kabiri cy'ikiguzi nta shingiro byahabwa kubera impamvu zasobanuwe haruguru.

2. ***Ku kibazo cy'indishyi, amafaranga y'ikurikiranarubanza n'igihembo cy'avoka***.

[20] Mu mwanzuro MUGISHA avuga ko yari yatangiye ibikorwa byo gutunganya ubutaka bwose yaguze kugirango abubyaze umusaruro ariko kuko byaje kugaragara ko yabeshwe mu gihe cy'amasezerano, byatumye ibyo bikorwa bidakomeza, ko kandi yaguze ubutaka ashaka kubukoreraho ibikorwa by'ishoramari, ko kuba kugeza ubu adashobora kubyaza umusaruro ubwo butaka byamuteye igihombo ndetse n'akababaro, bityo asaba indishyi zose hamwe zingana na 10.000.000frw hashingiwe ku ngingo za 136-138 y'itegeko n°45/2011 rigenga amasezerano. Mugisha asaba kandi gusubizwa 3.292.000frw hakiyongeraho na tike z'indege yatanze aje kuburana ubwa nyuma kubera ingendo yakoze ava i Burayi mu rwego rwo gukurikirana urubanza no kwishyurwa 2.000.000frw y'ikurikirana rubanza n'igihembo cy'Avocat kuko yiyambaje abanyamategeko kubera amakosa yakorewe na Bikamba Mathilde.

[21] Me NIYONDORA NSENGIYUMVA avuga ko indishyi basabye ziri mu mwanzuro, zikubiyemo tickets z'indege eshanu, ko mu ndishyi

z'ikurikiranarubanza amafaranga yose yatanze ya ticket angana na 3.292.330frw n'aho izindi ndishyi basabye ari ntacyo bazihinduraho.

[22] Mu mwanzuro, Bikamba avuga ko amasezerano yakozwe neza, Mugisha yaguze ibyo azi none ubu ariho ashora Bikamba mu manza bitari ngombwa, ko kandi yabanje kumurega muri police station ya Kimihurura, muri CID none ubu amureze muri TGI Nyarugenege kandi azi ko nta kuri afite, ko ibyo byose ari ukumutesha umutwe nta mpamvu, bityo ko ashingiye ku ngingo ya 106 y'itegeko N°21/2012 ryavuzwe haruguru asaba ko Mugisha acibwa indishyi zingana na 10.000.000 Frw kubera gushorwa mu manza bitari ngombwa, indishyi z'akababaro, igihembo cy'avocat n'ayikurikirana rubanza, agasoza avuga ko ibyo Mugisha asaba atabihabwa.

[23] Me RUGAMBAGE Albert avuga ko indishyi Mugisha asaba atazihabwa bitewe n'uko Bikamba nta kosa yakoze, ko impaka zishingiye ku bugure bwakozwe ku bwumvikane bw'impande zombi, ibyo kujya i Burayi akagaruka n'ibyo gutanga ibirego mu rukiko ariwe nyirabayazana, akaba asaba ko ibyo asaba ariwe wabicibwa kubera gushora Mathilde mu manza kuko yaguze ibyo azi kuko ubutaka bw'u Rwanda bwanditswe.

[24] Urukiko rusanga hashingiwe ku ngingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, Mugisha Reuben agomba guha Bikamba Mathilde miriyoni imwe (1.000.000frw) y'amafaranga y'urwanda kubera ku kumushora mu manza atagaragaza ibimenyetso by'ibyo aregera n'aho miryoni icumi asaba rusanga ari umurengera cyane ko akababaro katagira igipimo.

[25] Urukiko rusanga hashingiwe ku ngingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano no ku ngingo ya 26 y'amabwiriza N°01/2014 agena ibihembo mbonera by'abavoka, Mugisha Reuben agomba guha Bikamba Mathilde amafaranga ibihumbi magana arindwi y'igihembo cy'avoka kuko ariyo rubona akwiye kubera igihe urubanza rumaze ruburanwa, n'aho ikurikiranarubanza Bikamba asaba atarihabwa kubera ko nta gikorwa cyo gukurikirana urubanza yagaragaje ko yakoze cyane ko ari we uregwa.

III. **ICYEMEZO CY'URUKIKO**

[26] Rwemeye ko ikirego cya Mugisha Reuben rugisuzumye, rusanga nta shingiro gifite.

[27] Rwemeje ko ubugure bwabaye hagari ya Mugisha Reuben na Bikamba Mathilde kuwa 02 ugushyingo 2016 bugumanye agaciro mu ngingo zabwo zose.

[28] Rutegetse Mugisha Reuben guha Bikamba Mathilde amafaranga miriyoni imwe (1.000.000frw) y'indishyi z'akababaro n'amafaranga ibihumbi magana arindwi (700.000frw) y'igihembo cy'avoka.

[29] Rutegetso ko amafaranga ibihumbi mirongo itanu Mugisha Reuben yatanzeho ingwate y'amagarama arega, ahwanye n'ibyakozwe mu rubanza.

NI UKO URUBANZA RUCIWE KANDI RUSOMEWE MU RUHAME NONE KUWA 11/01/2018.

INTEKO

SE	SE
MUKAGASANA Marciana	MUSHIMIYIMANA Sylvie
UMUCAMANZA	**UMWANDITSI**