URUKIKO RWISUMBUYE RWA NYARUGENGE, RUKIJIJE URUBANZA RW'IMBONEZAMUBANO RC 00797/2016/TGI/NYGE KU WA 17 WERURWE 2017 KU BURYO BUKURIKIRA :

HABURANA :

UREGA : Ryumugabe Maurice mwene Nyiringabo Simon na MUKANGARAMBE Ancile wavutse 1978, utuye mu mudugudu w'Amajyambere, akagali ka Musezero, umurenge wa Gisozi, akarere ka Gasabo, Umujyi wa Kigali tel +250786159203,e-mail:rwigirajmv@gmail.com ahagarariwe na Me Nyiringabo Théoneste, tel.+250788653654, e-mail : theo123d@yahoo.fr

ABAREGWA :

1) Habiyakare Bénoit ubarizwa muri Canada, Québec 10 rue de Brome, Gatineau 9 (Québec), J8T ICA 4, ufite numero ya passeport WT 070899

2) Mukanyangezi Euphrasie, ubarizwa muri Canada, Québec 10 rue de Brome, Gatineau 9 (Québec), J8T ICA 4, ufite numero ya passport WT 046202

IKIREGERWA : Gutegeka ko inzu iri mu kibanza UPI 1/10/06/126 yandikwa ku wayiguze,

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1. Uru rubanza rurerekana imiterere yarwo igizwe n'uko ikibazo giteye, hamwe n'ingingo z'ababuranyi kuri buri ruhande (I), iyo miterere y'urubanza, ni yo iherwaho hasesengurwa ibibazo by'amategeko biri mu rubanza kugira ngo buri kibazo gifatweho ibyemezo (II), nyuma bigasozwa n'icyemezo cy'urukiko (III).

I. IMITERERE Y'URUBANZA

2. Urega avuga ko Habiyakare Benoit na Mukanyangezi Euphrasie bahagarariwe na Uwumukiza Jean d'Amour bagurishije inzu n'kibanza nº1547, cyahindutse UPI 1/01/06/01/126, bigurwa na Ryumugabe Maurice ku mafaranga 11,193,656 Frw, ni ukuvuga 18,656 y'amadorali ya Canada; nyuma yaho Benoit na Euphrasie bahaye Mukabarisa Jeovanie ububasha bwo kubakurikiranira ibyangombwa bishya by'ubutaka bwabo nº1547 ndetse no gukora ihererekanya ry'umutungo kuri Ryumugabe wawuguze. Iryo hererekanya ntiryabaye kuko mu gihe

cy'iyandikisha ry'ubutaka basanze ku masezerano y'ubukode burambye Habiyakare Benoit na Mukanyangenzi Euphrasie barahawe nºya passeport imwe ari yo y'umugabo WT 070899; Mukabalisa Jeovanie yasabye ko byakosorwa ariko ntibyakunda kuko Ikigo cy'Igihugu gishinzwe umutungokamere cyasabye ko Benoit na Euphrasie batanga numero za passport zabo nshya kuko bavugaga ko izo batanze kuri procuration zarangije igihe, Jeovanie agerageje kubashaka kuri aderesi batanze asanga batakizibarizwaho. Iki kirego kigamije gusaba urukiko gutegeka ko ikibanza cyavuzwe cyakwandikwa ku wakiguze kuko abagurishije batakibarizwa kuri aderesi batanze kandi nta n'izindi nshya batanze. Urubanza rwaburanishijwe abaregwa badahari. Ni ngombwa gusesengura ibibazo by'amategeko biri mu rubanza kugira buri cyose gifatweho icyemezo.

II.ISESENGURA RY'IBIBAZO BY'AMATEGEKO BIRI MU RUBANZA

1) Kureba niba igihe uregwa ataje kuburana nta mpamvu, kuburanisha adahari cyangwa kwimura iburanisha bikorwa kuko hari umuburanyi ubisabye cyangwa hagakurikizwa uko urukiko rubibona

2) Kureba niba umutungo urega avuga ko yaguze wamwandikwaho mu gihe abo yaguze na bo nta hazwi babarizwa

1) Kureba niba igihe uregwa ataje kuburana nta mpamvu, kuburanisha adahari cyangwa kwimura iburanisha bikorwa kuko hari umuburanyi ubisabye cyangwa hagakurikizwa uko urukiko rubibona

3. Ku munsi w'iburanisha ry'uru rubanza ku wa 27/2/2017 abaregwa ntibitabye urukiko ariko wareba amahamagara yabo bombi yakozwe ku wa 25/10/2016 ribahamagarira kuzana imyanzuro yo kwiregura ku wa 8/11/2016 no kwitaba Inama Ntegurarubanza ku wa 13/1/2017, bikaba bigaragara ko ku wa 30/10/2016, yagejejwe aho bahawe kuyohereza kuri adresse abaregwa bari baratanze, ndetse amahamagara akaba yaranatanzwe kuri email ya Habiyakare Benoit, bityo bikaba bikwiye ko uru rubanza ruburanishwa badahari kuko ibimaze gusobanurwa byumvikanisha ko abaregwa bamenyeshejwe iyi tariki y'inama nteguraruban za mu buryo bwemewe n'amategeko, kandi ari ho ababuranyi bamenyeshwa itariki y'iburanisha, hakwiye rero gukurikiza ibivugwa mu ngingo ya 59 y'Itegeko nº21/2012 ryo ku wa 14/6/2012 ryerekeye imiburanishirize

y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, aho ivuga ko ***iyo mu iburanisha (…) uregwa atitabye nta mpamvu, urega ashobora gusaba ko urubanza rwimurirwa ku yindi tariki cyangwa se gusaba ko ruburanishwa uregwa adahari. Muri icyo gihe hasuzumwa imyanzuro y'urega kandi ikirego cye kikakirwa, kigahabwa ishingiro iyo gifite ireme kandi cyaratanzwe mu buryo no mu nzira bikurikije amategeko***.

4. Icyo uru rukiko rubona ni uko rufite inzira 2 ziteganywa n'iyi ngingo ya 59. Inzira ya mbere ni uko rwahitamo gusubika iburanisha, iyi nzira ariko ikaba itatoranywa kuko atari uburyo bwiza bwo gutanga ubutabera bwihuse, mu gihe nta mpamvu yumvikana yatuma iburanisha risubikwa. Inzira ya 2 ni ukuburanisha urubanza uregwa adahari. Ahangaha bikaba ari ngombwa kuvuga ku cyerekeye kureba niba ibiteganywa n'ingingo ya 59, ni ukuvuga kuburanisha uregwa adahari, cyangwa kwimura iburanisha igihe uregwa atitabye nta mpamvu, bikorwa hakurikijwe uko ababuranyi basabye, cyangwa se niba byakorwa ukundi.

5. Iyo urega atitabye urukiko nta mpamvu, iyi ngingo ya 59, iteganya ko urega ashobora gusaba ko urubanza ruburanishwa cyangwa ko urukiko rwimura iburanisha. Iyi ngingo ubona ivuga ko ntacyo urukiko rufiteho ububasha, ari ukuburanisha urubanza, ari no gushyira iburanisha ku wundi munsi, mu gihe bitasabwe n'umuburanyi. Uru rukiko ariko rusanga iyi ngingo ikwiye kumvikana mu buryo bwagutse. Ndetse akaba ari na ko yagombye kuba ivugitse. Ni ukuvuga ko urukiko rufite ububasha bwo kwihitiramo imwe muri ziriya nzira 2 rukurikije uko rubona ibintu biteye, cyangwa se mu nyungu z'ubutabera. Bikumvikana ko byasabwa n'umuburanyi cyangwa ntabisabe, urukiko rugakurikiza gusaba k'umuburanyi cyangwa ntirugukurikize, rushobora kwibwiriza kwihitiramo ikwiye kurusha izindi muri ziriya nzira, bitewe n'uko urubanza ruteye. Rukaburanisha mu mizi uregwa adahari, cyangwa se rukimura iburanisha.

6. Iyi ngingo ya 59 y'Itegeko nº21/2012 ryo ku wa 14/06/2012 ku byerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, isa nk'iyumvikanisha ko, igihe hari umuburanyi utazi iby'amategeko ngo amenye guhitamo inzira asaba muri ziriya 2, urukiko rwabaza ababuranyi icyo bahitamo igihe uregwa atitabye. Niba ari kuburanisha urubanza uregwa adahari, cyangwa niba ari ukwimura itariki y'iburanisha. Uru rukiko rukabona ko ahubwo, bikwiye ko rubyibwirije, kandi mu nyungu z'ubutabera, rufata icyemezo cyo kuburanisha urubanza uregwa adahari cyangwa se rukimura iburanisha. Nta gikwiye rero kubuza ko urukiko ruhitamo icyemezo kimwe

gikwiye muri ibi byemezo uko ari 2, bitabaye ngombwa kubaza ababuranyi icyo bahitamo, kimwe n'uko hanabaye uguhitamo kwabo bagaragaje, urukiko rwakemeza ukundi kunyuranye n'icyifuzo cy'ababuranyi, rukabitangira impamvu.

7. Rero mu mirebere rusange ry'iyitaba ry'ababuranyi, atari n'abaregwa gusa, birebewe hamwe no ku barega, ibyerekeye kwitaba cyangwa kutitaba kw'ababuranyi, n'ingaruka bifite ku rubanza ku byerekeye kuruca badahari, cyangwa kwimura iburanisha, yewe ndetse no kurusiba, bikwiye kugenwa mu bushishozi bw'urukiko, kuko aho itegeko rigena ko bisabwa n'ababuranyi, bashobora gusaba ibyo urukiko rubona ko hari ibindi bikwiye kurushaho. Bashobora no kunyuranya ntibasabe ibihuje. Biranashoboka kandi ko ababuranyi batabasha kugira icyo basaba bityo urukiko rukabyibwiriza. Biranashoboka kandi ko ababuranyi batabasha kwivangura ubwabo, niba baregwa cyangwa barega, cyane cyane iyo habayeho kugobokeshwa. Hari imanza hagaragajwe ko umuburanyi ugobokeshwa ashobora kuza mu rubanza ari ku ruhande rw'abarega, cyangwa se akaba ku ruhande rw'abaregwa[1]. Bityo bikagorana kumenya uregwa n'urega, bityo bikanagorana kumenya niba urubanza rucibwa uregwa adahari (défaut) cyangwa urega adahari (réputé contradictoire) cyangwa se niba habaho gusiba ikirego (radiation). Ibi bibazo ni ko byagaragajwe mu zindi manza[2]. Ibi bisobanuro byose ni byo byahereweho rero uru rukiko rwemeza ko urubanza ruburanishwa uregwa adahari. Reka noneho dusuzume ikibazo gikurikiyeho

2) Kureba niba ikirego cyatanzwe kiterekeye ubucuruzi ku buryo cyasuzumwa n'urukiko ruburanisha imanza z'imbonezamubano

8. Me Nyiringabo ahagarariye urega avuga ko ku wa 6/10/2011 Habiyakare Benoit na Mukanyangezi Euphrasie bahagarariwe na Uwumukiza Jean d'Amour bagurishije inzu yabo iri mu kibanza nº1547, nyuma y'iyandikwa ry'ubutaka cyahindutse UPI 1/01/06/01/126, giherereye mu Mudugudu w'Uruhimbi, Akagali k'Amahoro, Umurenge wa Muhima, Akarere ka Nyarugenge, Umujyi wa Kigali igurwa na Ryumugabe Maurice ku mafaranga 11,193,656 Frw, ni ukuvuga 18,656 y'amadorali ya Canada ; ku wa 07/09/2011 Benoit na Euphrasie bahaye Mukabarisa Jeovanie ububasha bwo kubakurikiranira ibyangobwa bishya

[1]Nk'urubanza RC 0023/14/TGI/GIC rwaciwe ku wa 31 Nyakanga 2014 para 3 & 4; urubanza RCA 0100/14/TGI/GIC rwaciwe ku wa 27 Ugushyingo 2014 para 13-16

[2]Urubanza RC 0008/15/TGI/GIC RC 0009/15/TGI/GIC Habyarimana & crts c/ Rutongo Mines & REG rwaciwe ku wa 26/06/2015, para 9-16. Urubanza RPA 0010/15/TGI/GIC Uwamuhoza rwaciwe ku wa 13 Werurwe 2015, para 18-24. Urubanza RCA 0100/14/TGI/GIC Murisho & crts rwaciwe ku wa 27 ugushyingo 2014, para 24-26

by'ubutaka bwabo nº1547 ndetse no gukora ihererekanya ry'umutungo kuri Ryumugabe wawuguze. Iryo hererekanya ntiryabaye kuko mu gihe cy'iyandikisha ry'ubutaka basanze ku masezerano y'ubukode burambye Habiyakare Benoit na Mukanyangenzi Euphrasie bahawe numero ya passeport imwe ari yo y'umugabo WT 070899; Mukabalisa Jeovanie yasabye ko byakosorwa ariko ntibyakunda kuko Ikigo cy'Igihugu gishinzwe umutungokamere cyasabye ko Benoit na Euphrasie batanga numero za passport zabo nshya kuko bavugaga ko izo batanze kuri procuration zarangije igihe, Jeovanie agerageje kubashaka kuri aderesi batanze kuri procuration ndetse no mu masezerano y'ubugure asanga batakibarizwa kuri izo aderesi. Iki kirego kigamije gusaba urukiko gutegeka ko ikibanza cyavuzwe cyakwandikwa ku wakiguze cyane cyane ko abagurishije batakibarizwa kuri aderesi batanze kandi nta n'izindi nshya batanze

9. Urubanza rwaburanishijwe abaregwa badahari

UKO URUKIKO RUBIBONA

10. Uru rukiko rusanga ikigaragara ari uko hari amasezerano yo ku wa 6/10/2011 agaragza ko Ryumugabe Maurice yaguze umutungo uregerwa, awugura na Habiyakare na Mukanyangezi bashyingiranywe, hakiyongeraho ko Habiyakare wagurishije yahaye procuration ukurikirana ibyerekeye gukosoza ibyangombwa by'umutungo no gukora ku buryo wandikwa kuri Ryumugabe wawuguze, biragaragara rero ko Habiyakare watanze procuration yayihaye mushiki we iyo urebye imyirondoro yabo bombi. Icyangombwa cy'uwo mutungo UPI 1/01/06/01/126-126/NYA/MUH cyashyikirijwe urukiko kandi uwahawe procuration yo gukurikirana iby'iryo gurisha ryawo yanasabye ko nomero za passeport z'abo umutungo wari wanditseho ari bo Habiyakare na Mukanyangezi bikosorwa, ariko kuba bitarakosorwa ntibyabuza ko cyandikwa ku wakiguze hashingiwe ku ngingo za 263 na 264 CC L III. Iya 263 ikaba igira iti : ***"Igurisha ni amasezerano atuma umwe yiyemeza gutanga ikintu naho undi akishyura igiciro cyemeranijwe. Ashobora gukorwa mu nyandiko-mvaho cyangwa se mu nyandiko bwite"***. Na ho iya 264 ikagira iti ***:"Igurisha riba ryuzuye hagati y'abagiranye amasezerano kandi umugurisha akegurira burundu umuguzi icyagurishijwe mu gihe bumvikanye ku kintu no ku giciro cyacyo (…)***". Izi ngingo zumvikanisha neza ko igurisha riha uburenganzira bwo kwegukana icyaguzwe ku wakiguze. Umutungo rero Ryumugabe yaguze umwandukweho.

III.ICYEMEZO CY'URUKIKO

11. Rwemeje ko umutungo w'inyubako n'ikibanza bifite nºUPI 1/01/06/01/126-126/NYA/MUH (ex 1547) uri mu Mudugudu w'Uruhimbi, mu Kagari k'Amahoro, mu Murenge wa Muhima, mu Karere ka Nyarugenge, mu Mujyi wa Kigali, wandikwa kuri Ryumugabe Maurice.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE N'INTEKO Y'URUKIKO IGIZWE NA MBARUSHIMANA Marie-Laetitia, UMUCAMANZA, NA N.NDATIYE Françoise, UMWANDITSI.

INTEKO

UMUCAMANZA	**UMWANDITSI**
MBARUSHIMANA M.Laetitia	**N.NDATIYE Françoise**
SE/	**SE/**