URUKIKO RWISUMBUYE RWA NYARUGENGE RURI I NYARUGENGE RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO MU RUHAME KU RWEGO RWA MBERE, RUKIJIJE URUBANZA RC 00540/2016/TGI/NYGE MU RUHAME NONE KUWA 27/10/2017 KU BURYO BUKURIKIRA:

HABURANA

Urega: RUBOGORA Déogratias, mwene RUBOGORA Eric na MUKABALISA Rose, wavutse mu w'1969, utuye mu mudugudu w'Ubumwe, akagari ka Kibaza, umurenge wa Kacyiru, akarere ka Gasabo, Umujyi wa Kigali; tel +250788681930.

Abaregwa:

NTABONSANGANYWE Gabriel, mwene NTABOINSANGANYWE Casimir na MUKAKARAMAGE Drocelle, wavutse mu w'1958, utuye mu mudugudu wa Nyaburanga, akagari ka Akabahizi, umurenge wa Gitega, akarere ka Nyarugenge, Umujyi wa Kigali**.**

MUKAMUGANGA Cécile, mwene RUSATSI Paul na BURIRI Thérèse, wavutse mu w' 1960, utuye mu mudugudu wa Nyaburanga, akagari ka Akabahizi, umurenge wa Gitega, akarere ka Nyarugenge, Umujyi wa Kigali.

Ikiregerwa: Gutegeka abaregwa kubahiriza amasezerano bakampa inzu yanjye ndetse tukanakora mutation, kumpa amafaranga y'ubukode bakiriye kandi atari ayabo, kumpa indishyi zinyuranye zose hamwe za 5 000 000Frw.

I.IMITERERE Y'URUBANZA

[1] RUBOGORA Déogratias wunganiwe na Me MUGEMANYI Vedaste yatanze ikirego muri uru rukiko arega NTABONSANGANYWE Gabriel na MUKAMUGANGA Cécile ikiregerwa ari icyavuzwe haruguru. Asobanura ko baguze inzu ibaruye mu kibanza UPI 1/01/01/472 kuwa 23/7/2015, abishyura amafaranga yose bari bumvikanye uko ari 30 000 000Frw, ariko abo baguze banga kumwegurira inzu yaguze banga ko hakorwa na mutation, akaba aregeye urukiko asaba ko bategekwa kubahiriza amasezerano bakamwegurira inzu baguze bakamukorere na mutation, bakamuha 3 000 000Frw y'ubukode bw'amezi icumi bishyuje nyuma yo kuyigurisha ndetse akazakomeza kubarwa kugeza bayimweguriye, kumusubiza 2.000 000frw yishyuye avoka n'indishyi z'akababaro za 5. 000 000Frw ndetse no gusubizwa ingwate y'amagarama yatanze arega.

[2] NTABONSANGANYWE Gabriel avuga ko ku wa 23/07/2015 bagiranye na RUBOGORA amasezerano yo kugura inzu, ariko mu gihe bari bategereje ko RUBOGORA abishyura ikiguzi cyumvikanyweho (30.000.000 Frw) kuko bari kumukorera inyemezabwishyu, bajyana ku kagari

basinyira imbere y'umuyobozi w'akagari k'Akababahizi, ariko ababwira ko atari we ushinzwe ibyo kugurisha imitungo itimukanwa kandi ko ihererekanya ry' amafaranga n'imitungo itimukanwa rikorerwa imbere ya Notaire ushinzwe ubutaka, akaba ari yo mpamvu bavuyeyo batishyuranye bategereza ko RUBUGORA abaha ayo amafaranga baraheba, akaba atari n'ayo kugura inzu kuko yari ayo kubaguriza ariko akaba atarayabahaye, avuga ko batamuha inzu yabo kuko batigeze bagura, RUBOGORA akaba yagaragaza ko yigeze yishyura.

[3] Urubanza rwaburanishijwe MUKAMUGANGA atitabye ariko yarahamagawe mu buryo bukurikije amategeko, akora n'umwanzuro usibiza, ariko ntiyitabira urubanza, NTABONSANGANYWE avuga ko yarwaye, urega asaba ko yaburanishwa adahari.

Ikigomba gusuzumwa muri uru rubanza akaba ari ukumenya icyo amategeko ateganya ku uregwa wahamagawe ariko ntiyitabe urukiko, kumenya niba kuba RUBOGORA na NTABONSANGANYWE na MUKAMUGANGA baragiranye amasezerano y'ubugure bw'inzu bihagije ngo yegukana inzu baguze, kumenya niba indishyi zisabwa zikwiye gutangwa.

II.ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

1. Kumenya icyo amategeko ateganya ku uregwa wahamagawe ariko ntiyitabe urukiko

[4] RUBOGORA Déogratias wunganiwe na Me MUGEMANYI Vedaste yatanze ikirego muri uru rukiko arega NTABONSANGANYWE Gabriel na MUKAMUGANGA Cécile ikiregerwa ari icyavuzwe haruguru. Asobanura ko baguze inzu ibaruye mu kibanza UPI 1/01/01/472 kuwa 23/7/2015 abishyura amafaranga yose bari bumvikanye uko ari miliyoni mirongo itatu (30. 000. 000Frw) ariko abo baguze banga kumwegurira inzu yaguze banga ko hakorwa na mutation, asaba urukiko kubibategeka.

[5] Urubanza rwaburanishijwe MUKAMUGANGA Cécile uregwa atitabye ariko yaramenyeshejwe itariki y'urubanza akora n'imyanzuro yo kwiregura, ariko ku munsi wo kuburana ntiyitaba, NTABOSANGANYWE avuga ko yarwariye I Bugande, naho RUBOGORA asaba ko urubanza rwaburanishwa adahari kuko yamenye urubanza akaniregura, hakaba nta kigaragaza ko arwaye.

[6] Urukiko rukaba rwarasanze nta kigaragaza ko MUKAMUGANGA arwaye, akaba yaraburanishijwe adahari hakurikijwe ibiteganywa n'ingingo ya 59 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko"…*Iyo mu iburanisha rya mbere 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,*"n'ibiteganywa n'ingingo ya 13 y'amabwiriza n° 002/2015 yo kuwa 18/5/2015 ya Perezida w'Urukiko rw'Ikirenga agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko" *umuburanyi utitabye inama ntegurarubanza kandi yari yayimenyeshejwe mu buryo bukurikije amategeko, inama ntegurarubanza ikaba adahari, nta rindi hamagara yohererezwa ryerekeranye n'igihe urubanza mu mizi ruzabera."*

2. Kumenya niba kuba RUBOGORA na NTABONSANGANYWE na MUKAMUGANGA baragiranye amasezerano y'ubugure bw'inzu bihagije ngo yegukana inzu baguze

[7] RUBOGORA wunganiwe na Me MUGEMANYI Vedaste avuga ko yaguze inzu na NTABONSANGANYWE na MUKAMUGANGA ibaruye mu kibanza UPI 1/01/01/472 kuwa 23/7/2015 abishyura amafaranga yose angana na miliyoni mirongo itatu (30. 000. 000Frw) nk'uko bari babyumvikanyeho, ariko abo baguze banga kumwegurira inzu yaguze banga ko hakorwa na mutation, akaba aregeye urukiko asaba ko bategekwa kubahiriza amasezerano bakamwegurira inzu baguze, bakamukorere na mutation, avuga ko ibimenyetso ashingiraho ari amasezerano bagiranye kuwa 23/7/2015 bose basinyeho banayasinyisha imbere y'ubuyobozi bw'akagari, hakaba kandi abatangabuhamya bari bahari banasinye kuri iyo nyandiko barimo MUKARUTABANA Angeline na KABALISA Théogène.

[8] NTABONSANGANYWE avuga ko amasezerano RUBOGORA avuga bayagiranye, ariko atari ubugure bw'inzu ahubwo yaragombaga kubaguriza bakaba barayasinye kugirango yizereko bazamwishyura, bakamuha icyangombwa cya photocopie kuko ari ingwate bari bamuhaye, inyandiko yerekana ikaba itaba yubugure kuko ubugure bw'ikitimukanwa budakorerwa mu kagari, amasezerano bagiranye akaba atagaragaza aho yaba yarabishyuriye, ko batari kugura ngo babure kugaragaza uburyo bishyuranye bamuhe na reçu, bakaba bari no kumwegurira umutungo aguze bakamuha n'ibyangombwa byawo, bikaba rero bitarakozwe kuko bari bumvikanye ko abaguriza amafaranga ariko nayo nyuma yo kwandikirana ntayabahe, akaba yagaragagaza ibimenyetso niba ashimangira ko baguze kuko ntaho ubwishyu bwanditse mu nyandiko agaragaza kandi akaba atari gutanga amafaranga ye ngo babe bataramuhaye inyandiko y'uko bayakiriye.

[9] Mu mwanzuro we wo kwiregura, MUKAMUGANGA avuga ko barwaje umwana akaremba, bagakenera amafaranga yo kujya ku muvuza, aribwo RUBOGORA yabemereye kubaguriza bakamuha inzu ho ingwate, ariko ko bamaze kwandikirana amafaranga akayabima, akaba rero atahabwa uwo mutungo kuko atigeze awugura, amasezerano avuga agateshwa agaciro kuko atigeze ashyirwa mu bikorwa.

[10] Urukiko rwumvise abatangabuhamya barimo MUKARUTABANA Angélique akaba umuyobozi w'akagari wasinye ku masezerano avugwa, akaba yaremeje ko bamusanze ku kagari bavuga ko baguze, nawe akabasinyira kuko hari n'abagabo, ko ariko ibyo kwishyurana atigeze abibabaza, naho KABALISA Théogène avuga ko bari bamaze igihe babiganiraho kuko bose baturanye, ko baje kujyana kuri KCB, RUBOGORA akabikuza amafaranga akayaha NTABOSANGANYWE, bagahita bajya ku kagari gusinyisha.

[11] Urukiko rwabajije RUBOGORA niba koko ayo mafaranga yarayakuye kuri KCB, avuga ko yose yayakuye kuri KCB akayaha NTABONSANGANYWE bari bajyanye kuri banki, bavuyeyo akaba aribwo bahise bajya gusinyisha inyandiko ku kagari.

[12] NTABONSANGANYWE avuga ko batari kugura ngo abe ataramuhaye ibyangombwa by'inzu ngo amuhe na réçu y'ayo mafaranga, ibyo avuga ko bajyanye kuri banki akaba ari ukubeshya, akaba atari gutanga ayo mafaranga nta bagabo bahari cyangwa se ngo bigaragare ko ayatanze,

ibyo avuga bikaba bitahabwa agaciro mu gihe atagaragaza ko inshingano ye yo kwishyura yayubahirije.

[13] Urukiko rwasabye RUBOGORA kurushyikiriza *historique* ya banki y'uwo mwaka avuga yaguzemo inzu, ariko avuga ko uwo munsi yabikuje miliyoni icumi gusa (10.000.000Frw) andi miliyoni makumyabiri(20.000.000Frw) akaba yari azifite ku ruhande, ko ariko azajya kuzana *historique* nk'uko urukiko ruyimusabye.

[14] Ku munsi urubanza rusubukurikiweho, RUBOGORA yarushyikirije historique igaragaraho itariki ya kuwa 23/7/2015 yonyine, igaragaza ko yabikuje 10.20.000Frw, abajijwe impamvu atazanye iy'umwaka wose nk'uko yabisabwe n'urukiko, avuga ko atari yumvise neza icyo rwamutumye ko ariko nayo yazayishyikiriza urukiko.

[15] NTABONSANGANYWE avuga ko batari kugura ngo abe ataramuhaye ibyangombwa by'inzu, kuko icyo afite ari photocopie kandi iyo nzu iri hamwe n'izindi nzu, bakaba bari kuba barabisobanuye, ikirego cye kikaba kitahabwa agaciro mu gihe atagaragaza ko inshingano ye yo kwishyura yayubahirije.

Uko urukiko rubibona

[16] UrukIko rusanga mu bimenyetso RUBOGORA ashingiraho avuga ko yaguze inzu na NTABOSANGANYWE n'umugore we MUKAMUGANGA ariko bakanga kuyubahiriza ari amasezerano bagiranye kuwa 23/7/2015 agaragaza ko baguze inzu ku mafaranga miliyoni mirongo itatu (30.000.000Frw), abatangabuhamya bakaba barayisinyeho ndetse n'ubuyobozi bw'akagari bukayisinyaho, ayo masezerano ariko akaba atagaragaza ko bishyuranye n'uburyo bwakoreshejwe.

[17] Rusanga kandi RUBOGORA mu gusobanura uburyo yishyuye NTABOSNGANYWE na MUKAMUGANGA, avuga ko yabahaye amafaranga yose mu ntoki ayakuye kuri banki ya KCB, ko bajyanye na NTABONSANGANYWE akayabikuza akayamuha, akongera akavuga ko yabikuje miliyoni icumi gusa uwo munsi kuko andi yari ayafite ku ruhande, naho NTABONSANGANYWE akagaragaza ko atigeze amwishyura kuko ntaho bigaragara ko kandi batari kubura kubyandika akanamuha reçu ko yakiriye ayo mafaranga.

[18] Rusanga mu gusesengura amasezerano yabaye hagati y'ababuranyi, urukiko rukwiye gushingira ku ngingo ya 74 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, iteganya ko "Amasezerano asesengurwa hakurikijwe ibisanzwe bikorwa iyo ibisobanuro byahawe amasezerano n‟umwe mu bayagiranye bihuye n‟ibisanzwe bikorwa kandi urundi ruhande rukaba rubizi neza. Urwo ruhande rufatwa nk‟aho rwamenye ibyo bisobanuro byatanzwe" rukaba rero rusanga nubwo hari amasezerano y'ubugure ababunyi bose badahakana ko bashyizeho umukono, nta kigaragaza ko amafaranga avugwa muri ayo masezerano yigeze atangwa kuko ntaho bigaragara, nyamara hakurikijwe ibisanzwe bikurikizwa mu bugure bw'umutungo utimukanwa, mu masezerano y'ubugure haba hagomba kugaragazwa icyaguzwe n'uburyo uwagurishije yishyuwe, bakagaragaza uburyo inshingano yo guhererekanye umutungo izakorwa, kuba rero ntabigaragara muri ayo amasezerano, rukaba rusanga nk'uko NTABOSANGANYWE abivuga, nta bugure bwabayeho kuko ibyagombaga kubugaragaramo bituzuye, kuko bagombaga

kugaragaza uburyo bishyuranye, igihe cyo kumushyikiriza umutungo no kumukorera mutation cyane ko bose bemeza ko uwo mutungo uri hamwe n'indi mitungo ntacyongombwa kihariye ufite, bikanakubitaraho ko umunyamabanga nshingwabikorwa w'akagari wabasinyiye yemeje ko yabasobanuriye ko ayo masezerano bagomba kujya kuyasinyisha kwa notaire, nyamara bikaba bitarakozwe, urega akaba rero atavuga ko bamwimye umutungo yaguze kandi batarubahirije ibiteganywa n'amategeko ku bugure no kuburyo bagomba guhererekanya uburenganzira nkuko bitegnywa mu ngingo ya 34 y' Iteka rya Minisitiri N° 002/2008 ryo kuwa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa iteganya ko" Amasezerano yo kwegurira undi ibintu ashobora gukorerwa imbere y'umubitsi w'inyandiko z'ubutaka, abikorera inyandiko mbere yo kubyandika. Umubitsi w'inyandiko z'ubutaka akora inyandiko gusa nyuma y'aho aboneye icyemezo cy'ubyeguriye undi kandi amaze kumenya neza umwirondoro n'ubushobozi bw'abagiranye amasezerano." Kuba ababuranyi bose bemeranya ko bagiye ku muyobozi w'akagari akanabasinyira ariko akababwira ko bagomba kujya kwa notaire nyamara ntibajyeyo, urega akaba atagaragaza ko hari intambwe yakoze ariko abaregwa kuri urwo rwego bakananirana ngo abene kwitaba urukiko, rukaba rubona nta bugure bwabayeho kuko baba barakurikije icyo amategeko ateganya.

[19] Rubona kandi RUBOGORA yaremeye imbere y'urukiko ko yishyuye amafaranga ayakuye muri banki KCB, ariko akaba yaratumwe *historique* ya banki y'umwaka wose yaguriyemo inzu ngo urukiko rurebe niba koko ibyo avuga aribyo, ariko akagaragaza iyo ku itariki ya 23/7/2015, nabyo bikaba bitafatwaho ukuri kuko asobanura ikirego cye yemeje ko bajyanye na NTABONSANGANYWE akamubikuriza amafaranga miliyoni mirongo itatu akayamuha, bigahamwa kandi na KABALISA Théogène wemeje ko yari ahari uretse ko we yasigaye hanze batajyanye muri guichet, ariko ku nyandiko yazanye bikaba bigaragara ko yabikuje miliyoni icumi gusa, imvugo ze zivuguruzanya zikaba zidahagije mu gusobanura mu buryo buhagije uburyo yaba yarishyuye iyo nzu, akaba kandi ibyangombwa agaragaza abaregwa bamuhaye by'iyo nzu nabyo bitashingirwaho kuko mu masezerano bagiranye bavuze ko iyo nzu idafite ibyangombwa byihariye kuko ifatanye n'andi mazu, nyamara bakaba bataragaragaje uburyo bazakora iherererekanya bubasha kuri iyo nzu n'uburyo azabona ibyangombwa, bishimangira ko bataguze nk'uko NTABOSANGANYWE abivuga kuko bagombaga kugaragaza mu buryo busobanutse ibyo basezeranye.

[20] Urukiko rukaba rusanga RUBOGORA atagaragaza ko yishyuye inzu ya NTABONSANGANYWE na MUKAMUGANGA, rukaba rero ntaho rwahera rutegeka ko ahabwa iyo nzu agakorerwa na mutation nk'uko biteganywa mu ngingo ya 3 y'Itegeko n° 15/2004/ ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "*buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana* » n'ibiteganywa n'ingingo ya 9 y'Itegeko n°21/2012 ryo kuwa 14/06/202 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: "*Urega agomba kugaragaza ibimenyetso by'ibyo aregera; iyo abibuze uwarezwe aratsinda.*"

2. Kubyerekeye indishyi zisabwa

[21] RUBOGORA wunganiwe na Me MUGEMANYI asaba urukiko ko abaregwa bamuha indishyi zinyuranye zikubiyemo 3 000 000Frw y'ubukode bw'amezi icumi bishyuje nyuma yo kuyigurisha

ndetse akazakomeza kubarwa kugeza bayimweguriye, ko bamusubiza 2.000 000Frw yishyuye avoka n'indishyi z'akababaro za 5. 000 000Frw ndetse no gusubizwa ingwate y'amagarama yatanze arega.

[22] NTABOSANGANYWE avuga ko nta ndishyi bacibwa kuko atigeze abaha amafaranga yari yabemereye kubaguriza, akaba ari we wategekwa kubaha indishyi zo kubashora mu manza ndetse n'ikurikirana rubanza

[23] Urukiko rukaba rusanga kuba ikirego cya RUBOGORA urukiko rwasanze nta shingiro gifite, n'indishyi asaba atazihabwa kuko nta shingiro ryazo, naho indishyi uregwa asaba nawe akaba atazihabwa kuko atagaragaje aho azishingira.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeye kwakira ikirego rwashyikirijwe na RUBOGORA Déogratias, rugisuzumye rusanga nta shingiro gifite.

[25] Rwemeje ko amasezerano RUBOGORA Déogratias yagiranye na NTABONSANGANYWE Gabriel na MUKAMUGANGA Cécile y'ubugure bw'inzu nta shingiro afite, akaba atagomba kwegurirwa umutungo uyavugwamo.

[26] Rutegetse ko amagarama RUBOGORA Déogratias yatanzeho ingwate arega angana n'amafaranga ibihumbi mirongo itanu (50.000Frw) aguma mu Isanduku ya Leta kuko ahwanye n'ibyakozwe mu rubanza.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KUWA 27/10/217.

Umucamanza	**Umwanditsi**
NYIRANSAGUYE Athanasie	**MUSHIMIYIMANA Sylvie**
Sé	Sé

Byandukuwe nk'uko biri ku cyemezo cy'umwimerere

None kuwa……

N'umwanditsi……