KABERUKA v MUBERA

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC 00009/2019/CA (Mukandamage, P.; Ngagi na Kamere, J.) 18 Nzeri 2020]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Inzira ebyiri z'ubujurire – Inzira y'ubujurire ntiyigera na rimwe ibangikanywa n'inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, kuko iyi nzira yo gusubirishamo urubanza ku mpamvu z'akarengane yemerwa gusa ku rubanza rutagishobora kujuririrwa. – Umuburanyi ntashobora kujuririra urubanza n'inzira yo kurusubirishamo cyangwa se indi nzira, muri icyo gihe inzira yahisemo bwa mbere ikumira indi.

Incamake y'ikibazo: Urubanza rwahereye mu Rukiko rw'Ibanze rwa Gisenyi Kaberuka Mwiza arega Me Mubera, asaba gukuraho ifatira ryakorewe ku mitungo ye no gutesha agaciro cyamunara yakorewe ku mutungo we. Muri urwo rubanza hagobotsemo kubushake Hakuzimana waguze mu cyamunara, hanagobokeshwa kugahato Omende. Urukiko rwaciye urubanza rwemeza ko ikirego cya Kaberuka Mwiza kidafite ishingiro, rwemeza ko irangizarubanza ryakozwe na Irakiza Elie ku wa 21/08/2017 yubahiriza urubanza rw'ubutane Mwiza yaburanye n'umugabo we, ari naryo Mwiza ashingiraho avuga ko iyo mitungo ari iye, rikuweho, kuko rinyuranyije n'ibyategetswe n'urubanza yarangizaga, rwemeza ko cyamunara Me Mubera yakoze igumyeho, rwemeza ko Hakuzimana e akomeza gutunga ikibanza cye, kuko yakiguze mu buryo no mu nzira bikurikije amategeko.

Mwiza ntiyishimiye icyemezo cyafashwe, ajuririra Urukiko Rwisumbuye rwa Rubavu avuga ko Urukiko rw'Ibanze rwa Gisenyi rwaciye urubanza ku kitaregewe, rutesha agaciro irangizarubanza ryo ku wa 21/08/2017, rwirengagiza ibimenyetso rwashyikirijwe, maze ruvuga ko Mubera nta kosa yakoze, kubera ko imitungo ibaruwe kuri Gatera wenyine kandi ko Mwiza atigeze abiregera, ko rwategetse ko ikibanza kiba icya Hakuzimana Fulgenc rwirengagije ko yakibonye mu buryo bunyuranyije n'amategeko, rukanamutegeka gutanga indishyi kandi ari we warenganye, asaba Urukiko kwemeza ko akwiye guhabwa indishyi. Urukiko rwaciye urubanza rwemeza ko urega yari afite inyungu zo kurega kandi yarubahirije ibihe byo kurega ariko adafite ububasha bwo kurega, kuko yaregeraga umutungo utamwanditseho., maze rwemeza kutakira ikirego, runatesha agaciro urubanza rwo mu Rukiko rw'Ibanze kubera ko urega ntabubasha yari afite bwo kurega.

Mwiza nanone ntiyishimiye imikirize, ajuririra Urukiko Rukuru, na none umunsi yajuririye Urukiko Rukuru yandikiye Perezida w'Urukiko Rukuru asaba ko urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu rusubirwamo ku mpamvu z'akarengane. Mbere gato ko iburanisha riba ku bujurire, urega yandikiye Urukiko avuga ko aretse urubanza, Urukiko rwemeza uko kureka ikirego cye.

Mu gusaba ko urubanza rusubirwamo ku mpamvu z'akarengane, Mwiza yavuze ko Urukiko Rwisumbuye rwa Rubavu rwamurenganyijje rwemeza ko nta bubasha afite bwo kuregera imitungo itamwanditseho, kandi rwari rwemeje ko afite inyungu zo kuyikurikirana.

Mu iburanisha. Murera yavuze ko ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane cyatanzwe na Mwiza kitakwakirwa kuko kinyuranije n'amategeko, bitewe n'uko Mwiza yiyambaje inzira ebyiri icyarimwe z'ubujurire. Kuko umunsi yasabye ko urubanza rusubirrwamo ku mpamvu z'akarengane ari nawo munsi yatanze ikirego cy'ubujurire ibi bikaba bihabanye n'itegeko. Ko kandi kwandikira Perezida w'Urukiko asaba ko urubanza rusubirwamo ku mpamvu z'akarengane atigeze amugaragariza ko yanajuriye kuko iyo abigaragaza ntabwo Perezida w'Urukiko yari kwemera ubwo busabe bwe.

Perezida w'Urukiko Rukuru urugereko rwa Musanze, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane, rwoherezwa mu Rukiko rw'Ubujurire ngo ruburanishwe. Hakuzimana na Omenge bavuga ko bemeranwa na Mubera ku bisobanuro yatanze ku nzitizi yatanze yo kutakira ikirego.

Mwiza avuga ko yatanze ikirego cy'ubujurire ariko nyuma aza gusanga, bitewe n'uko ari ubujurire bwa kabiri, ubujurire bwe butari bwujuje ibisabwa kugira ngo buzemerwe, ahitamo kureka urwo rubanza rw'ubujurire bwa kabiri, ahubwo yahisemo gukomeza inzira yari yatangiye yo gusubirishamo urubanza ku mpamvu z'akarengane, kandi ko ibyo Mubera avuga ko yatanze ikirego cy'akarengane mu gihe urubanza asaba ko rusubirwamo ku mpamvu z'akarengane rwari rutaraba ndakuka atari byo, kuko urubanza yasabye ko rwasubirwamo ku mpamvu z'akarengane ari urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu kandi rwamaze kuba ndakukanaho Ko kuba yariyambaje inzira yo gusubirishamo urubanza ku mpamvu z'akarengane akanarujurira, ariko nyuma akaza kureka urubanza nyuma yo gusanga ubujurire bwe ntacyo bwamugezaho, bitamubuza gukomeza inzira yonyine asigaranye yo gusubirishamo urubanza ku mpamvu z'akarengane.

Incamake y'icyemezo: 1. Inzira y'ubujurire ntiyigera na rimwe ibangikanywa n'inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, kuko iyi nzira yo gusubirishamo urubanza ku mpamvu z'akarengane yemerwa gusa ku rubanza rutagishobora kujuririrwa. Umuburanyi Ntashobora kujuririra urubanza n'inzira yo kurusubirishamo cyangwa se indi nzira, muri icyo gihe inzira yahisemo bwa mbere ikumira indi, bityo ikirego cyatanzwe na Kaberuka Mwiza kikaba kitakiriwe.

Inzitizi yatanzwe ifite ishingiro;
Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane nticyakiriwe.

Amategeko yashyingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 15 ni ngingo ya 111

y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, ingingo ya 55

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu rubanza RC 00630/2018/TB/GI rwaciwe ku wa 21/12/2018, Kaberuka Mwiza Rose yatanze ikirego mu Rukiko rw'Ibanze rwa Gisenyi arega Me Mubera Jean Claude, asaba gukuraho ifatira ryakorewe ku mitungo ye ifite UPI: 3/03/12/02/73 na UPI:3/03/12/02/41 no gutesha agaciro cyamunara yakorewe ku mutungo we ubaruwe kuri UPI: 3/03/12/02/41, iyo mitungo Kaberuka Mwiza Rose akaba yaravugaga ko yayigabanye ku wa 21/08/2017 n'uwari umugabo we Gatera Kagorora Mahe Jean Pierre harangizwa urubanza RCA 0232/010/TGI/RBV rw'ubutane bwabo rwaciwe ku wa 05/07/2011. Hakuzimana Fulgence waguze mu cyamunara umutungo ufite UPI 3/03/12/02/41 yagobotse ku bushake muri urwo rubanza, na Omende Djamba Kambilo Tony arugobokeshwamo ku ngufu.

[2] Mu guca urwo rubanza ku rwego rwa mbere ku wa 21/12/2018, Urukiko rw'Ibanze rwa Gisenyi rwemeje ko ikirego cya Kaberuka Mwiza Rose kidafite ishingiro, rwemeza ko irangizarubanza ryakozwe na Irakiza Elie ku wa 21/08/2017 yubahiriza urubanza RC 0232/010/TGI/RBV, ari naryo Kaberuka Mwiza Rose ashingiraho avuga ko iyo mitungo ari iye, rikuweho, kuko rinyuranyije n'ibyategetswe n'urubanza yarangizaga, rwemeza ko cyamunara Me Mubera Jean Claude yakoreye ku kibanza gifite UPI 3/03/12/02/41 yubahiriza urubanza RC0126/2016/TGI/RBV igumyeho, rwemeza ko Hakuzimana Fulgence akomeza gutunga ikibanza cye kibaruwe kuri UPI 3/03/12/02/41, kuko yakiguze mu buryo no mu nzira bikurikije amategeko, kandi rutegeka Kaberuka Mwiza Rose guha Me Mubera Jean Claude indishyi z'akababaro zingana na 300.000 Frw, akamusubiza n'igihembo cy'Avoka kingana na 500.000 Frw, agaha kandi Omende Djamba Kambilo amafaranga y'ikurikiranarubanza angana na 200.000 Frw n'igihembo cy'Avoka kingana na 500.000 Frw.

[3] Kaberuka Mwiza Rose ntiyishimiye icyo cyemezo akijuririra mu Rukiko Rwisumbuye rwa Rubavu, maze ikirego cye gihabwa RCA 00090/2018/TGI/RBV, avuga ko Urukiko rw'Ibanze rwa Gisenyi rwaciye urubanza ku kitaregewe, rutesha agaciro irangizarubanza ryo ku wa 21/08/2017, rwirengagiza ibimenyetso rwashyikirijwe, maze ruvuga ko Mubera Jean Claude nta kosa yakoze, kubera ko imitungo ibaruwe kuri Gatera wenyine kandi ko Kaberuka Mwiza Rose atigeze abiregera, ko rwategetse ko ikibanza gifite UPI:3/03/12/02/41 kiba icya Hakuzimana Fulgence rwirengagije ko yakibonye mu buryo bunyuranyije n'amategeko, rukanamutegeka guha Mubera Jean Claude na Omende Djamba Lambilo Tony indishyi kandi ari we warenganye, asaba Urukiko kwemeza ko akwiye guhabwa indishyi.

[4] Mubera Jean Claude, ashyigikiwe na Hakuzimana Fulgence na Omende Djamba Kambilo, yatanze inzitizi yo kutakira ikirego cya Kaberuka Mwiza Rose, aho abo baburunyi basobanuraga ko Kaberuka Mwiza Rose nta nyungu afite mu kuregera imitungo itamwanditseho, ko ibyo aburana muri urwo rubanza yarangije kubiburana mu zindi manza (RC00230/2017/TB/GI na RCA 00031/2018/TGI/RBV) zabaye itegeko, ko kandi yarengeje igihe cyo gutanga ikirego aho cyamunara yabaye ku wa 05/11/2017, ariko we akaregera kuyitesha agaciro ku wa 29/10/2018.

[5] Mu guca urubanza RCA 00090/2018/TGI/RBV ku rwego rw'ubujurire ku wa 28/01/2019, Urukiko Rwisumbuye rwa Rubavu rwasanze mu rubanza RC 00630/2018/TB/GI rwajuririrwaga, Urukiko rw'Ibanze rwaraburanishije ikirego cyatanzwe n'umuburanyi Kaberuka Mwiza Rose wari ufite inyungu zo kurega kandi yarubahirije ibihe byo kurega ariko adafite ububasha bwo kurega, kuko yaregeraga umutungo utamwanditseho. Urwo Rukiko rwemeje kutakira ikirego cyatanzwe na Kaberuka Mwiza Rose, rwemeza ko urubanza RC 00630/2018/TB/GI ruvanyweho, kubera kutagira ububasha k'urega, rutegeka Kaberuka Mwiza Rose guha Mubera Jean Claude 600.000 Frw y'indishyi, akanaha Omende Djamba Kambilo na Hakuzimana Fulgence buri wese 500.000 Frw y'igihembo cya Avoka.

[6] Ku wa 27/02/2019, Kaberuka Mwiza Rose yajuririye urubanza RCA 00090/2018/TGI/RBV mu Rukiko Rukuru, Urugereko rwa Musanze, ikirego cye cy'ubujurire bwa kabiri cyandikwa kuri RCAA 00004/2019/HC/MUS. Mu gihe iburanisha ryari riteganyijwe kuba ku wa 06/08/2019, Kaberuka Mwiza Rose ahagarariwe na Me Masengesho Innocent yandikiye urwo Rukiko ku wa 05/08/2019 asaba kureka urubanza. Ku wa 30/08/2019, Urukiko rwemeje ukureka urubanza kwa Kaberuka Mwiza Rose, ariko rumutegeka guha Mubera Jean Claude 400.000 Frw, akanaha Omende Djamba Kambilo na Hakuzimana Fulgence buri wese 350.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[7] Ku wa 27/02/2019 na none, umunsi hatangiweho ikirego cy'ubujurire bwa kabiri, Kaberuka Mwiza Rose yandikiye Perezida w'Urukiko Rukuru, Urugereko rwa Musanze, asaba gusubirishamo urubanza RCA 00090/2018/TGI/RBV rwo ku wa 28/01/2019 ku mpamvu z'akarengane, avuga ko Urukiko Rwisumbuye rwa Rubavu rwamurenganyije rwemeza ko nta bubasha afite bwo kuregera imitungo itamwanditseho, kandi rwari rwemeje ko afite inyungu zo kuyikurikirana.

[8] Perezida w'Urukiko Rukuru, Urugereko rwa Musanze, nyuma yo gusuzuma ubusabe bwe, yandikiye Perezida w'Urukiko rw'Ikirenga ku wa 06/06/2019 ibaruwa Réf: 040/19/HC/MUS asaba ko urubanza RCA 00090/2018/TGI/RBV rwasubirwamo kubera impamvu y'akarengane.

[9] Mu cyemezo 139/CJ/2019 cyo ku wa 16/07/2019, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo ubanza rusubirwamo ku mpamvu z'akarengane, maze arwohereza mu Rukiko rw'Ubujurire kugira ngo abe ari rwo ruzaruburanisha, rwandikwa kuri RS/INJUST/RC 00009/2019/CA.

[10] Iburanisha ry'urubanza mu ruhame ryashyizwe ku wa 16/03/2020 ariko uwo munsi ryimurirwa ku wa 22/06/2020 mu rwego rwo kubahiriza ingamba zafashwe na Leta zo kwirinda icyorezo cya Covid-19. Ku wa 22/06/2020 nabwo iburanisha ryongera kwimurwa rishyirwa ku wa 01/09/2020 kubera impamvu yavuzwe haruguru, uwo munsi ugeze iburanisha ribera mu ruhame, Kaberuka Mwiza Rose ahagarariwe na Me Masengesho Innocent na Me Nyungura Joseph, Mubera Jean Claude yunganiwe na Me Nsengiyumva Niyondora, Hakuzimana Fulgence yunganiwe na Me Habyarimana Oswald, naho Omende Jamba Kambilo Tony ahagarariwe na Me Rugambage Albert, hasuzumwa inzitizi yo kutakira ikirego yatanzwe na Avoka wa Mubera Jean Claude ndetse n'amafaranga asabwa n'ababuranyi kubera ibyagenze ku rubanza, maze ababuranyi bamenyeshwa ko ruzasoma icyemezo ku wa 18/09/2020, ari nacyo gihe bikorewe.

II.IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

a. Kumenya niba ikirego cyatanzwe na Kaberuka Mwiza Rose cyo gusubirishamo urubanza ku mpamvu z'akarengane kitagomba kwakirwa, kuko ku rubanza rumwe yiyambaje icyarimwe inzira yo kurujuririra n'iyo kurusubirishamo ku mpamvu z'akarengane

[11] Me Nsengiyumva Niyondora, wunganira Mubera Jean Claude, avuga ko ku wa 27/02/2019, Kaberuka Mwiza Rose yandikiye Perezida w'Urukiko Rukuru, Urugereko rwa Musanze, asaba ko urubanza RCA 00090/2018/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 28/01/2019 rwasubirishwamo ku mpamvu z'akarengane, uwo munsi kandi atanga n'ikirego cy'ubujurire bw'urwo rubanza bwahawe RCAA 00004/2019/HC/MUS, akaba asanga Kaberuka Mwiza Rose yariyambaje icyarimwe inzira ebyiri z'ubujurire mu gihe ibi binyuranyije n'ibiteganywa n'ingingo ya 15 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[12] Me Nsengiyumva Niyondora akomeza avuga ko ubwo ku wa 27/02/2019 hatangwaga ikirego cy'ubujurire bwa kabiri cyavuzwe haruguru ndetse n'inyandiko isaba ko urubanza RCA 00090/2018/TGI/RBV rwo ku wa 28/01/2019 rusubirishwamo ku mpamvu z'akarengane, urwo rubanza rwari rutaraba itegeko, ko ahubwo rwari rutegereje gusuzumwa mu bujurire bwa kabiri. Avuga ko uku gusabira urubanza gusubirishwamo ku mpamvu z'akarengane kandi rutaraba itegeko ndetse ahubwo rwanajuririwe binyuranyije n'ibiteganywa n'ingingo ya 55 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

[13] Me Nsengiyumva Niyondora avuga kandi ko iyo Kaberuka Mwiza Rose ajya kuba yaragaragarije Perezida w'Urukiko Rukuru, Urugereko rwa Musanze, ko yanajuririye urubanza yasabiraga gusubirishwamo ku mpamvu z'akarengane, Perezida w'Urukiko Rukuru, Urugereko rwa Musanze, atari kubirengaho ngo yemere gukorera Perezida w'Urukiko rw'Ikirenga raporo yo kuwa 06/06/2019 ku karengane mu rubanza rwari rugitegereje gusuzumirwa ubujurire mu Rukiko ayobora, ibi kandi bikaba byaratumye ku wa 16/07/2019 Perezida w'Urukiko rw'Ikirenga yarafashe icyemezo ku karengane ku rubanza rukiburanishwa mu Rukiko Rukuru, Urugereko rwa Musanze.

[14] Avuga ko Urukiko Rukuru, Urugereko rwa Musanze, rwasoje urwo rubanza ku wa 30/08/2019, ubwo rwasomaga icyemezo cyarwo ku kureka urubanza kwasabwe na Kaberuka Mwiza Rose ku wa 05/08/2019 kwasuzumiwe mu iburanisha ryo ku wa 06/08/2019. Asoza avuga ko asanga urubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane rwari rutaraba itegeko ubwo byakorwaga ku wa 27/01/2019, ko ahubwo rwabaye itegeko guhera ku wa 30/08/2019 ari nabwo rwashoboraga kwemererwa gusubirwamo ku mpamvu z'akarengane hakurikijwe ingingo ya 55 y'Itegeko rigena ububasha bw'inkiko yavuzwe haruguru.

[15] Me Habyarimana Oswald, wunganira Hakuzimana Fulgence, ndetse na Me Rugambage Albert, uhagarariye Omende Djamba Kambilo Tony, bavuga ko bemeranwa na Me Nsengiyumva Niyondora ku bisobanuro yatanze ku nzitizi yatanze yo kutakira ikirego.

[16] Me Masengesho Innocent na Me Nyungura Joseph, Bahagarariye Kaberuka Mwiza Rose bavuga ko uwo bahagarariye yatanze ikirego cy'ubujurire bw'urubanza RCA 00090/2018/TGI/RBV ku wa 27/02/2019 ariko nyuma aza gusanga, bitewe n'uko ari ubujurire bwa kabiri, ubujurire bwe butari bwujuje ibisabwa kugira ngo buzemerwe, ahitamo kureka urwo rubanza rw'ubujurire bwa kabiri, ahubwo yahisemo gukomeza inzira yari yatangiye yo gusubirishamo urubanza ku mpamvu z'akarengane, kandi ko ibyo abunganira Mubera Jean Claude bavuga ko Kaberuka Mwiza Rose yatanze ikirego cy'akarengane mu gihe urubanza asaba ko rusubirwamo ku mpamvu z'akarengane rwari rutaraba ndakuka atari byo, kuko urubanza Kaberuka Mwiza Rose yasabye ko rwasubirwamo ku mpamvu z'akarengane ari urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu kandi rwamaze kuba ndakuka, kuko urwo rubanza rwaciwe ku wa 28/01/2019, maze ruba ndakuka ku wa 27/02/2019 nyuma y'iminsi mirongo itatu (30) ruciwe.

[17] Abahagariye Kaberuka Mwiza Rose bakomeza bavuga ko ku birebana n'ibyo abunganira MUBERA Jean Claude bavuga ko Perezida w'Urukiko rw'Ikirenga yafashe icyemezo cyo kwemeza ko urubanza rwabayemo akarengane kandi hari urubanza rukiburanishwa, bo basanga uyu munsi Urukiko Rukuru rwaramaze gufata icyemezo kuri urwo rubanza rw'ubujurire, hakaba nta bujurire bugihari, kuko Kaberuka Mwiza Rose yasabye kureka urubanza kandi bikemerwa n'abandi baburanyi, ku buryo babona nta yindi nzira isigaye Kaberuka Mwiza yacamo ngo aregere urubanza rwamuteye akarengane, uretse iyi yo gusubirishamo urubanza ku mpamvu z'akarengane yari yaratangiye.

[18] Me Nyungura Joseph avuga ko kuba uwo ahagarariye yariyambaje inzira yo gusubirishamo urubanza ku mpamvu z'akarengane akanarujurira, ariko nyuma akaza kureka urubanza nyuma yo gusanga ubujurire bwe ntacyo bwamugezaho, bitamubuza gukomeza inzira yonyine asigaranye yo gusubirishamo urubanza ku mpamvu z'akarengane. Asobanura ko mu gihe ubujurire ari inzira isanzwe yemewe mu kuregera inkiko, gusaba ko urubanza rusubirishwamo ku mpamvu z'akarengane byo ari inzira ibanza gucishwa mu buyobozi, ko kuba Perezida w'Urukiko Rukuru, Urugereko rwa Musanze, yarandikiye Perezida w'Urukiko rw'Ikirenga ku wa 06/07/2019 akemeza ko urubanza rurimo akarengane, na we akarwohereza mu

Rukiko rw'Ubujurire nta kindi gisigaye gusuzumwa cyatuma ikirego kitakirwa, ko ahubwo Urukiko rw'Ubujurire rwasuzuma mu mizi akarengane rwaregewe.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 15 y'Itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko : "Umuburanyi ntashobora, ku rubanza rumwe, kwiyambaza icyarimwe inzira y'ubujurire n'iyo gusubirishamo urubanza. Inzira ya mbere yahisemo ituma atakaza uburenganzira yari afite bwo kwiyambaza indi nzira".

[20] Iyi ngingo ntivuga bimwe mu ndimi 3 yanditsemo, ariko icyo Umushingamategeko yashatse gukumira, ni uko umuburanyi adashobora kujuririra urubanza n'inzira yo kurusubirishamo cyangwa se indi nzira, ko rero muri icyo gihe inzira yahisemo bwa mbere ikumira indi.

[21] Ku byerekeye gusubirishamo urubanza ku mpamvu z'akarengane, ingingo ya 55, igika cya mbere, y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, iteganya ko Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera imwe mu mpamvu zikurikira :

1. iyo hari ibimenyetso simusiga bigaragaza, ruswa, ikimenyane cyangwa icyenewabo, byagize ingaruka ku mikirize y'urubanza bikaba bitarigeze bimenywa n'uwatsinzwe mu gihe cy'iburana,
2. iyo mu icibwa ry'urubanza hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese,
3. iyo urubanza rudashobora kurangizwa hakurikije imikirize yarwo".

Naho mu gika cya nyuma cy'iyo ngingo ikagira iti: "Icyakora, umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko ntiyemerewe gusaba ko urubanza yatsinzwe rusubirwamo ku mpamvu z'akarengane, keretse akarengane kabonywe n'Ubugenzuzi Bukuru bw'Inkiko".

[22] Dosiye y'urubanza igaragaza ko ku wa 25/02/2019, Kaberuka Mwiza Rose yandikiye Perezida w'Urukiko Rukuru, Urugereko rwa Musanze, asaba ko urubanza RCA 00090/2018/TGI/RBV rusubirishwamo ku mpamvu z'akarengane, ubusabe bwe bugera ku Rukiko ku wa 27/02/2019, ko ku wa 06/06/2019 Perezida w'Urukiko Rukuru, Urugereko rwa Musanze yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCA 00090/2018/TGI/RBV rwasubirwamo kubera impamvu z'akarengane, maze ku wa 16/07/2019, Perezida w'Urukiko rw'Ikirenga afata icyemezo N˚139/CJ/2019 cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 00090/2018/TGI/RBV, arwohereza uru Rukiko rw'Ubujurire.

[23] Dosiye y'urubanza igaragagaza na none ko kuri iyo tariki ya 27/02/2019, Kaberuka Mwiza Rose yatanze ikirego cy'ubujurire mu Rukiko Rukuru, Urugereko rwa Musanze, ajuririra urubanza RCA 00090/2018/TGI/RBV, ikirego cyandikwa kuri RCAA 00004/2019/HC/MUS, bigeze ku wa 05/08/2019 Me Masengesho Innocent uhagarariye Kaberuka Mwiza Rose, ageza ku Rukiko ibaruwa yanditse mu mwanya wa Kaberuka Mwiza Rose asaba kureka urubanza rwari ruteganyirijwe iburanisha bukeye bwaho ku wa 06/08/2019, uwo munsi, ababuranyi bose baritaba, baburana kuri uko kureka urubanza ndetse no ku mafaranga yasabwe kubera ibyarugenzeho, maze ku wa 30/08/2019 Urukiko rwemeza ukureka urubanza kwasabwe na

Kaberuka Mwiza Rose, anacibwa amafaranga yagenewe abandi baburanyi kubera ibyagiye ku rubanza.

[24] Hashingiwe ku biteganywa n'ingingo ya 15 y'Itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yavuzwe haruguru, Urukiko rurasanga inzira y'ubujurire (*appel*) itakwigera na rimwe ibangikanywa n'inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, kuko iyi nzira yo gusubirishamo urubanza ku mpamvu z'akarengane yemerwa gusa ku rubanza rutagishobora kujuririrwa, nk'uko biteganywa n'ingingo ya 55 y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko nayo yavuzwe haruguru.

[25] Ku birebana n'ibivugwa n'uwunganira Mubera Jean Claude ko ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane cyatanzwe na Kaberuka Mwiza Rose kitagomba kwakirwa, kuko yagitanze mu buryo bunyuranyije n'amategeko, Urukiko rurasanga ku wa 27/02/2019, Kaberuka Mwiza Rose yaratanze ikirego cy'ubujurire bw'urubanza asaba ko rwasubirwamo ku mpamvu z'akarengane mu Rukiko Rukuru, Urugereko rwa Musanze, uwo munsi anandikira Perezida w'urwo Rukiko amusaba ko urubanza rwe rwasubirishwamo ku mpamvu z'akarengane, bikaba bigaragara ko Kaberuka Mwiza Rose yasabye ko urubanza RCA 00090/2018/TGI/RBV rusubirishwamo ku mpamvu z'akarengane, ubujurire kuri urwo rubanza butarafatwaho icyemezo ngo rube ndakuka kandi rube ruciwe ku rwego rwa nyuma.

[26] Urukiko rw'Ubujurire rurasanga kuba Kaberuka Mwiza Rose yari yatanze ikirego cy'ubujurire bw'urubanza RCA 00090/2018/TGI/RBV, mu Rukiko Rukuru, Urugereko rwa Musanze, yaragombaga gutegereza Urukiko rukabanza rugafata icyemezo ku bujurire bwe, dore ko n'iyo ikirego cye kitakirwa nk'uko abamwunganira babivuga ko babigizeho impungenge, ntibyari kumubuza nyuma y'icibwa ry'urubanza gutanga ikirego gisaba gusubirishamo urubanza rwe ku mpamvu z'akarengane.

[27] Urukiko rurasanga rero Kaberuka Mwiza Rose yariyambaje inzira yo gusubirishamo ku mpamvu z'akarengane urubanza RCA 00090/2018/TGI/RBV rutaraba itegeko, kuko rwari rutaraibwa burundu n'Urukiko Rukuru, Urugereko rwa Musanze, bityo ugusubirishamo urubanza ku mpamvu z'akarengane ntikwagombaga kwakirwa na Perezida w'Urukiko rw'Ikirenga, kikaba rero kitagomba kwakirwa n'Urukiko rw'Ubujurire cyoherejwemo.

[28] Hashingiwe ku ngingo ya 15 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi n'iya 55 y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko zavuzwe haruguru no ku bimaze gusobanurwa, Urukiko rurasanga inzitizi yo kutakira ikirego cya Kaberuka Mwiza Rose kigamije gusubirishamo urubanza ku mpamvu z'akarengane yatanzwe na Mubera Jean Claude ifite ishingiro.

b. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka yasabwe na Mubera Jean Claude na Hakuzimana Fulgence afite ishingiro

[29] Mubera Jean Claude asaba amafaranga miliyoni eshatu (3.000.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka, Hakuzimana Fulgence agasaba amafaranga miliyoni ebyiri (2.000.000 Frw) yo gushorwa mu manza, yiyongera ku yo yari yagenewe mu manza zabanje, naho Me rugambage Albert uburanira Omende Djamba Kambilo Tony we akaba ntacyo yabivuzeho.

[30] Me Nyungura Joseph avuga ko amafaranga asabwa uwo ahagarariye nta shingiro yahabwa kuko inkiko zibanza zamurenganyije.

UKO URUKIKO RUBIBONA

[31] Ingingo ya 111 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igateganya ko : '' Ikirego cy'amafaranga y'ikurikirana rubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza, ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo, gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe''.

[32] Urukiko rurasanga Kaberuka Mwiza Rose yarasabye gusubirishamo urubanza ku mpamvu z'akarengane, ariko ikirego kikaba kitagomba kwakirwa, kuko yagitanze mu buryo bunyuranyije n'amategeko, bikaba byaratumye Mubera Jean Claude na Hakuzimana Fulgence biyambaza abanyamategeko bababuranira bagomba guhemba ndetse no gukurikirana urubanza muri uru Rukiko, ariko amafaranga basaba ni menshi, bakaba bakwiye guhabwa amafaranga agenwe mu bushishozi bw'Urukiko, buri wese akaba agenewe ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka n'ibihumbi magana abiri (200.000 Frw) y'ikurikiranarubanza, kuri uru rwego.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko inzitizi yo kutakira ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane yatanzwe na Mubera Jean Claude ifite ishingiro ;

[34] Rwemeje ko ikirego cya Kaberuka Mwiza Rose cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 00090/2018/TGI/RBV rwaciwe ku wa 28/01/2019 n'Urukiko Rwisumbuye rwa Rubavu kitakiriwe ;

[35] Rwemeje ko ikirego cy'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka cyatanzwe na Mubera Jean Claude n'icyatanzwe na Hakuzimana Fulgence bifite ishingiro ;

[36] Rutegetse Kaberuka Mwiza Rose kwishyura Mubera Jean Claude na Hakuzimana Fulgence buri wese 500.000 Frw y'igihembo cy'Avoka na 200.000 Frw y'ikurikiranarubanza kuri uru rwego ;

[37] Ruvuze ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.