NDIZEYE v TWAGIRAYEZU N'ABANDI.

[Rwanda URUKIKO RW'UBUJURIRE – RC 00007/2020/CA (Kamere., P.J.) 25 Nzeri 2021]

Amategeko agenga imiburanishize y'imanza mbonezamubano – Ikirego cy'impaka zavutse mu kurangiza urubanza – Utanga ikirego cy'impaka zavutse mu irangiza ry'urubanza agomba kugaragaza izo mpaka aho zishingiye, uwo bazigiranye ndetse n'urwego bazigiranyeho.

Amategeko agenga imiburanishize y'imanza mbonezamubano – Integurarubanza – Ikirego kitagaragajwe ngo gisuzumwe mu nama ntegurarubanza ntabwo cyakirwa ngo gisuzumwe mu gihe cy'iburanisha mu mizi.

Incamake y'ikibazo: Uru rubanza rwatangiye Twagirayezu n'umuvandimwe we bakomoka kuri Kagaba Chantal na Twagirayezu Alexis barega mu Rukiko Rwisumbuye rwa Gasabo, Ndizeye basaba kwemeza ko amasezerano y'ubukode burambye y'umutungo cyanditse kuri Ndizeye giteshwa agaciro kuko yakibonye akoresheje uburiganya. Urukiko rwemeje ko amasezerano y'ubukode burambye ku mutungo uburanwa ateshwa agaciro, rutegeka Ndizeye kuzibukira uwo mutungo ukandikwa kuri Twagirayezu n'umuvandimwe we.

Ndizeye ntiyishimiye imikirize y'urubanza, arujuririra mu Rukiko Rukuru, narwo rwemeje ko nta gihindutse ku rubanza rwaciwe n'Urukiko Rwisumbuye. Rutegeka Ndizeye guha indishyi zitandukanye Twagirayezu n'umuvandimwe we.

Ndizeye ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko rw'Ikirenga, nyuma y'ivugururwa ry'Urwego rw'Ubucamanza ubujurire bwimurirwa mu Rukiko rw'Ubujuri Urukiko rw'Ubujurire rwemeje ko ubujurire bwa Ndizeye nta shingiro bufite, ko ubujurire bwuririye ku bundi bwatanzwe na Twagirayezu n'umuvandimwe we bufite ishingiro kuri bimwe, rutegeka Ndizeye gukuraho inyubako yashyize mu kibanza cy'abo.

Nyuma y'uko urubanza rubaye itegeko, Umuhesha w'Inkiko Uwitije Rumena yashyize mu bikorwa icyemezo cy'Urukiko kuri bimwe, umutungo uburanwa uvanwa kuri Ndizeye wandikwa ku bawutsindiye ariko kurangiza urubanza ku bijyanye no kuvanaho inyubako yashyize mu kibanza cya Twagirayezu ntibyakorwa.

Ndizeye yatanze ikirego mu Rukiko rw'Ubujurire arusaba gukemura ikibazo cy'impaka zavutse mu irangizwa ry'Urubanza rwaciwe n'Urukiko rw'Ubujurire avuga ko hari ibyo yashyize ku mutungo waburanwe ariko inkiko zose zikaba zitaravuze uburyo agomba kubikuraho. Uburanira Twagirayezu n'umuvandimwe we yatanze inzitizi yo kutakira ikirego avuga ko Urukiko rw'Ubujurire rudafite ububasha bwo kuburanisha ikirego ku mpaka zavutse mu irangiza ry'urubanza. Urukiko rwanzuye ko rufite ububasha. Mu rubanza mu mizi Urukiko rwemeje ko nta mpaka zivutse mu irangiza ry'urubanza rwaciwe n'Urukiko rw'Ubujurire, kuko Ndizeye atagaragaza uwo bari barigeze bazigirana n'urwego baba barazigiranyeho.

Incamake y'icyemezo : 1. Utanga ikirego cy'impaka zavutse mu irangiza ry'urubanza agomba kugaragaza izo mpaka aho zishingiye, uwo bazigiranye ndetse n'urwego bazigiranyeho. Bityo udasobanukiwe n'icyemezo cy'Urukiko ntiyatanga ikirego cy'impaka zavutse mu irangiza ry'urubanza ahubwo atanga ikirego cyo gusobanuza Urubanza.

2. Icyemezo cy'Urukiko gitegeka Gukuraho inyubako nta kindi kivuze kitari ukuyisenya no kuvanaho ibikoresho byari biyubatse.

3. Ikirego kitagaragajwe ngo gisuzumwe mu nama ntegurarubanza ntabwo cyakirwa ngo gisuzumwe mu gihe cy'iburanisha mu mizi.

Ikirego nta shingiro gifite;
Nta mpaka ziri mu irangiza ry'imanza RC00286/2016/TGI/GSBO-RCA 00157/2017/HC/KIG-RCAA 00037/2018/CA

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 6,111,247, 248

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, aho Twagirayezu lexis na Twagirayezu Vanessa baregaga Ndizeye Alphonse basaba kwemeza koumutungo utimukanwa uherereye mu Mudugudu wa Bukinanyana, Akagari ka Nyagatovu, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali, ubaruye kuri UPI:1/02/09/03/58 wandikwa ku bazungura ba Kagaba Chantal na Twagirayezu Alexis, basaba kandi ko icyemezo cy'amasezerano y'ubukode burambye bw'uwo mutungo cyanditse kuri Ndizeye Alphonse giteshwa agaciro kuko yakibonye akoresheje uburiganya, akanategekwa kwishyura amafaranga y'ikurikiranarubanza, igihembo cya Avoka n'igarama. Urukiko Rwisumbuye rwa Gasabo mu rubanza RC00286/2016/TGI/GSBO rwemeje ko umutungo uburanwa waguzwe amafaranga yagurishijwe inzu iherereye mu Kagari ka KacyiruSud, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali, Kagaba Chantal yari yarasigiwe n'umugabo we wa mbere witwaga Twagirayezu Alexis, rwemeza kandi ko amasezerano y'ubukode burambye Ndizeye Alphonse yagiranye na Leta kuri uwo mutungoateshejwe agaciro, rutegeka Ndizeye Alphonse kuzibukira uwo mutungo ukandikwa kubazungura ba Kagaba Chantal na Twagirayezu Alexis, no kubaha 2.000.000Frw y'indishyi z'akababaro, 1.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka na 50.000Frw y'igarama kuri buri wese.

[2] Ndizeye Alphonse ntiyishimiye imikirize y'urubanza, arujuririra mu Rukiko Rukuru, aho mu rubanza RCA00157/2017/HC/KIG Urukiko rwemeje ko urubanza RC00286/2016/TGI/GSBO rugumyeho, rutegeka Ndizeye Alphonse guha Twagirayezu Alexis na Twagirayezu Vanessa amafaranga 500.000Frw y'igihembo cya Avoka.

[3] Ndizeye Alphonse ntiyishimiye imikirize y'urubanza, arujuririra mu Rukiko rw'Ikirenga ariko nyuma y'ivugururwa ry'Urwego rw'Ubucamanza ubujurire bwimurirwa mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigenaububasha bw'Inkiko.

[4] Mu rubanza RCAA00037/2018/CA, Urukiko rw'Ubujurire rwemeje ko ubujurire bwa Ndizeye Alphonse nta shingiro bufite, ko ubujurire bwuririye ku bundi bwatanzwe na Twagirayezu Alexis na Twagirayezu Vanessa bufite ishingiro kuri bimwe, rutegeka Ndizeye Alphonse gukuraho inyubako yashyize mu kibanza cy'abazungura baTwagirayezu Alexis na Kagaba Chantal, no kubaha amafaranga 1.500.000Frw y'igihembo cya Avoka n'amafaranga 500.000Frw y'ikurikiranarubanza ku rwego rw'ubujurire.

[5] Nyuma y'uko urubanza rubaye itegeko, Umuhesha w'Inkiko Uwitije Rumena Janvieryashyize mu bikorwa icyemezo cy'Urukiko kuri bimwe, umutungo ubaruwe kuri UPI: 1/02/09/03/58 uvanwa kuri Ndizeye Alphonse wandikwa ku bawutsindiye aribo Twagirayezu Alexis na Twagirayezu

Vanessa, ariko asabye Ndizeye Alphonse kurangiza urubanza ku bijyanye no kuvanaho inyubako yashyize mu kibanza cy'abazungura ba Twagirayezu Alexis na Kagaba Chantal, ntiyabikora ku neza.

[6] Ku wa 14/11/2019 Ndizeye Alphonse yatanze ikirego mu Rukiko rw'Ubujurire arusaba gukemura ikibazo cy'impaka zavutse mu irangizwa ry'imanza RC00286/2016/TGI/GSBO-RCA00157/2017/HC/KIG- RCAA00037/2018/CA ngo kuko hari ibyo yashyize ku mutungo waburanwe ariko inkiko zose zikaba zitaravuze uburyo agomba kubikuraho, akaba yibaza niba azabisenya cyangwa se azagurira abo baburana, cyangwa se niba abo baburana bazamusubiza ibyo yashyizeho, ndetse hakaba hari n'ikibazo cy'uko Umuhesha w'Inkiko w'Umwuga yabujije abapangayi gukomeza kumwishyura ubukode kandi bitarategetswe mu cyemezo cy'Urukiko.

[7] Iburanisha ry'urubanza ryashyizwe ku wa 16/11/2020, ababuranyi bose bahari, Ndizeye Alphonse yunganiwe na Me Jean Claude Twayigize, naho Twagirayezu Alexis naTwagirayezu Vanessa bahagarariwe na Me Nkundabarashi Moise,wanunganiraga Uwitije Rumena Janvier.

[8] Me Nkundabarashi Moise yasabye ko Urukiko rubanza gusuzuma inzitizi y'iburabubasha bw'Urukiko, avuga ko Urukiko rw'Ubujurire rudafite ububasha bwokuburanisha ibibazo bijyanye n'impaka zivutse mu irangiza ry'imanza hashingiwe ku biteganywa n'ingingo ya 52 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, ko bitanateganyijwe mu ngingo ya 2 y'Itegeko Ngenga Nº 0002/2018.OL ryo ku wa 04/04/2018 rishyiraho Urukiko rw'Ubujurire, bityo ko iki kirego gikwiye gusuzumwa n'Urukiko Rwisumbuye hashingiwe ku ngingo ya 31 y'Itegeko Nº 30/2018 ryoku wa 02/06/2018 rigena ububasha bw'Inkiko.

[9] Ku wa 15/01/2021, Urukiko rw'Ubujurire rwafashe icyemezo kuri iyo nzitizi, rwemeza ko rufite ububasha bwo kuburanisha ibibazo bijyanye n'impaka zivutse mu irangiza ry'ururubanza rwaciye ku rwego rwa nyuma.

[10] Nyuma y'igihe kinini Urukiko rwamaze rushishikariza ababuranyi kumvikana ku irangiza ry'urubanza ku neza (exécution volontaire) ariko bikananirana, urubanza mu mizi rwarakomeje ruburanishwa mu ruhame ku wa 06/09/2021, Ndizeye Alphonse ahagarariwe na Me Twayigize Jean Claude naho abaregwa Rumena Janvier yunganiwe na Me Moise Nkundabarashi, wari anahagarariye Twagirayezu Alexis na Twagirayezu Vanessa. Isomwa ry'urubanza rikaba ryarashyizwe ku wa 23/09/2021, ari nawo munsi rusomeweho.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO

Kumenya niba hari impaka ku irangizwa ry'imanza RC00286/2016/TGI/GSBO-RCA00157/2017/HC/KIG- RCAA 00037/2018/CA ku bijyanye n'uburyo Ndizeye Alphonse agomba gukura inyubako ye ku mutungo watsindiwe na Twagirayezu Alexis na Twagirayezu Vanessa muri izo manza

[11] Me Twayigize Jean Claude, uhagarariye Ndizeye Alphonse, avuga ko hari impaka zavutse mu irangiza ry'urubanza, kuko kugeza ubu hari ibyo Ndizeye Alphonse yongeye kunzu yaburanwe ariko inkiko zose zikaba ntacyo zabivuzeho. Ikindi ngo Urukiko ntirwavuze uburyo bwo gukuraho ibyo yongeyeho rwategetse ku buryo yibaza nibaazasenya cyangwa niba azagurira abo baburana ubutaka cyangwa se bazamusubiza ibyo yashyizeho cyangwa se nanone niba azazibukira byose. Avuga kandi ko hari n'ikibazo cy'uko umuhesha w'inkiko yabujije abapangayi (abakodesha) gukomeza kwishyura Ndizeye Alphonse ubukode kandi bitarategetswe mu cyemezo cy'urukiko.

[12] Me Nkundabarashi Moise, uhagarariye Twagirayezu Alexis na Twagirayezu Vanessa, akanunganira Uwitije Rumena Janvier, avuga ko ibibazo byibazwa n'urega bigamije guhindura icyemezo cy'Urukiko cyamaze kuba ndakuka kandiubu atari ubujurire atanze. Bakaba bo basanga nta mpaka zihari, kuko Urukiko rwemeje ko ibyo yubatse yabyubatse mu buriganya nk'uko bigaragara mu gika cya 54 kugeza kuri 58 cy'urubanza RCAA00037/2018/CA. Akomeza asobanura ko agaciro urega avuga yongeye ku nzu nta bimenyetso agatangira ndetse atanagaragaza umusaruro wavuyemo aho uri n'uko ungana, kandi ko Ndizeye Alphonse atakomeza kwakira ubukode kandi umutungo atari uwe yaranategetswe kuwuvanaho ibyo yubatse.

[13] Me Nkundabarashi Moise n'umuhesha w'inkiko Uwitije Rumena Janvier bavuga kandi ko ku bijyanye n'icyemezo cy'Urukiko cyo kuvanaho inyubako nta kundi inyubako yakurwaho uretse kuyisenya, ko kuba yakumvikana n'abaregwa akabagurira cyangwa bo bakamugurira atari itegeko, kandi ko Urukiko rutategeka abantu kumvikana cyane cyane ko bitari no mu rubanza rurangizwa.

[14] Me Nkundabarashi Moise n'umuhesha w'inkiko Uwitije Rumena Janvier bakomeza bavuga ko impamvu yo gufatira ubukode mu gihe inyubako yongeweho na Ndizeye Alphonse itaravanwaho ari uko hari amafaranga asaga 5.000.000Frw y'indishyi, ikurikiranarubanza n'ajyanye n'imanza Ndizeye Alphonse yategetswe kwishyura ariko ntiyayishyura ku neza, ko ariya mafaranga y'ubukode ari nk'ifatira (saisie)ry'ayo mafaranga yategetswe kwishyura.

[15] Mu iburanisha kandi umuhesha w'inkiko Uwitije Rumena Janvier yavuze ko we nk'umuhesha w'inkiko wasabwe kurangiza urubanza nta rujijo yigeze agira mu kumva igisobanuro cy'icyememezo cy'Urukiko cyo kuvanaho inyubako Ndizeye Alphonse yongeye ku mutungo yatsindiwe na Twagirayezu Alexis na Twagirayezu Vanessa, ko we yumva nta kindi bivuze kitari ukuzisenya, ariko ko aho aboneye ko Ndizeye Alphonse yabitanzeho ikirego cy'impaka ku irangiza ry'urubanza, na we yahisemo kwihangana agategereza kubanza kureba ikizava muri urwo rubanza.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 247 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibikurikira: "Mu gihe cy'iminsi mirongo itatu (30) kuva urubanza rubaye itegeko cyangwa hasohotse indi nyandikompesha, uwatsinzwe yegera uwamutsinze amumenyesha uburyo yifuza gushyira mu bikorwa ibyo icyo cyemezo cy'Urukiko cyangwa indi nyandikompesha bitegeka kugira ngo babyumvikaneho. Ugomba kwishyura kandi ategetswe kugaragaza umutungo we ushobora kuvanwamo ubwishyu binyuze muri cyamunara igihe atubahirije amasezerano, akanagaragaza urutonde n'uburyo byakurikiranywa mu kubigurisha. Iyo bumvikanye, ayo masezerano afatwa nk'inyandikompesha agatangazwa ku rubuga rw'imanza zirangizwa n'uwatsinzwe cyangwa Umuhesha w'Inkiko".

[17] Ingingo ya 248 y'iryo Tegeko yo iteganya ibi bikurikira : "Iyo amasezerano avugwa mu ngingo ya 243 y'iri tegeko atubahirijwe uko yakabaye, urubanza cyangwa indi nyandikompesha birangizwa ku ngufu za Leta hifashishijwe Umuhesha w'Inkiko kugira ngo uberewemo umwenda yishyurwe, imitungo y'ugomba kwishyura itezwe cyamunara kugira ngo ivanwemo ubwishyu, nta rundi rubanza rubaye. Ni nako bigenda iyo mu minsi mirongo itatu (30) ivugwa mu ngingo ya 247 y'iri tegeko, uwatsinzwe atigeze yegera uwamutsinze ngo bumvikane uburyo azamwishyura".

[18] Ikibazo cyo kumenya niba hari impaka mu irangizwa ry'urubanza gisaba kubanza kumenya ikigibwaho impaka mu cyemezo cy'urubanza kigomba kurangizwa, abarebwa n'irangiza ry'urwo rubanza bafitanye izo mpaka ku cyo batumva kimwe, ndetse n'urwego rw'irangizwary'urubanza izo mpaka zavukiyeho. Kubera kandi ko ikibazo cy'impaka ku irangiza ry'urubanza kiba kireba urubanza

rwamaze kuba ndakuka, Urukiko rusuzuma bene izo mpakaruba rugomba kuzikemura rwigengesereye kugira ngo rutagwa mu mutego wo gukoresha iyi nzira mu kuba rwagira ikintu na gito ruhindura ku mikirize y'urubanza rwamaze kuba ndakuka.

[19] Ku birebana n'icyakabaye kigibwaho impaka muri uru rubanza, Me Twayigize Jean Claude, uburanira Ndizeye Alphonse, aragaragaza ko agace k'icyemezo cy'urubanza RCAA00037/2018/CA katumvikana uko karangizwa ari akagira kati: "Rutegetse Ndizeye Alphonse gukuraho inyubako yashyize mu kibanza cya Twagirayezu Vanessa na Twagirayezu Alexis"[1].

[20] Ku birebana n'abarebwa n'irangiza ry'uru rubanza bafitanye impaka ku cyo baba batumva kimwe, Me Twayigize Jean Claude, uburanira Ndizeye Alphonse, aragaragaza ko ibyo yita impaka mu irangiza ry'urubanza nta wundi bigeze bazigirana, ko ahubwo ari ibibazo bitandukanye we n'uwo aburanira ku ruhande rwabo bonyine bibajije ariko ntibigere babishyikiriza Twagirayezu Vanessa na Twagirayezu Alexis batsinze urubanza rwamaze kuba ndakuka cyangwa se ngo babishyikirize umuhesha w'inkiko w'umwuga bari bamaze kumenya ko ari we ugiye kurangiza urubanza ku ngufu za Leta, ahubwo bakihutira kubisabira igisubizo mu Rukiko mu buryo bw'ikirego cyo gukemura impaka mu irangiza ry'urubanza nyamara batagaragaza uwo bazigiranye mbere.

[21] Ku birebana n'urwego rw'irangiza ry'urubanza impaka Ndizeye Alphonse yaregeye zaba zaravukiyeho, Urukiko rurasanga zitaravutse Ndizeye Alphonse agerageza kwegera abamutsinze ngo bumvikane uko urubanza rwarangizwa ku neza mu buryo buteganywan'ingingo ya 247 y'Itegeko Nº22/2018 ryo ku wa 29/04/2018 yibukijwe haruguru, kuko nta kigaragaza ko uwatsinzwe yari yigeze agira ubwo bushake bwo kurangiza urubanza ku neza ngo nibura atere intambwe ya mbere yo kugira icyo asaba kubyumvikanaho n'abamutsinze, kandi nta n'ubwo izo mpaka zavutse ku rwego rw'irangizwa ry'urubanza ku ngufu za Leta muburyo buteganywa n'ingingo ya 248 y'itegeko ryavuzwe haruguru nayo yibukijwe haruguru kuko mbere y'uko Ndizeye Alphonse aregera uru Rukiko ntacyo umuhesha w'inkiko yari yagakoze kigamije kurangiza urubanza ku bireba ingingo yo "*kuvanaho inyubako*" ngo bibe nibura hari impaka byateje hagati ya Ndizeye Alphonse n'umuhesha w'inkiko.

[22] Urukiko rurasanga ahubwo ikibazo Ndizeye Alphonse yagize kigatuma atanga iki kirego gisa n'icyo gusobanuza agace k'icyemezo cy'urubanza RCAA00037/2018/CA kagira kati : "Rutegetse Ndizeye Alphonse gukuraho inyubako yashyize mu kibanza cya Twagirayezu Vanessa na Twagirayezu Alexis". Ibi Urukiko rukaba rubishingira ku bisobanuro byagiye bitangwa mu iburanisha na Me Twayigize Jean Claude, uburanira Ndayizeye Alphonse, aho yibaza uburyo uwo aburanira yakura ku nzu nini yo guturano ibyo yongeyeho atayisenye yose kuko ngo atabasha gutandukanya neza ibyo yongeyeho n'ibyari biyisanzweho, uburyo yakuraho inzu ya annexe y'ubucuruzi yongeye ku kibanza kandi yarubatswe ikongerera agaciro inzu nini yo guturamo, akibaza niba hagati y'uwatsinzwe n'abatsinze urubanza hatabaho kwishyurana mu buryo bw'amafaranga aho gusenya kuko ngo gusenya nta ruhande na rumwe rwabyungukiramo.

[23] Urukiko rurasanga ariko n'ubwo inshingano y'Urukiko rwaregewe gukemura impaka mu irangiza ry'urubanza itakabaye yitiranywa n'inshingano y'Urukiko iyo rwaregewe gusobanura urubanza rwaciye, ibisobanuro by'agace k'icyemezo cy'Urukiko kateye impungenge Ndizeye Alphonse bigaragara mu buryo bwumvikana neza mu kibazo cya (f) cyasuzumwe n'Urukiko mu rubanza rurangizwa aho cyiswe "Ku byerekeye inyubako y'ubucuruzi Ndizeye Alphonse yashyize mu kibanza kirimo inzu iburanwa". Isuzuma ry'icyo kibazo rikaba ritangirira ku gace ka [48] rikagera ku gace ka [58] ahagaragara ibyifuzo bya buri ruhande mu zaruburanye, aho mu gace ka [52] Me Niyomugabo Christophe waburaniraga Ndizeye Alphonse yasabaga kudategeka Ndizeye Alphonse

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[1] Reba agace ka 68, ku rupapuro rwa 15 rw'incarubanza y'urubanza RCAA 00037/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 12/07/2019.

gusenya ibyo yubatse mu buryo bujya gusa n'ubwo birimo kongera gusabwamo na Me Twayigize Jean Claude uyu munsi muri uru rubanza, naho mu gace ka [53] Me Nkundabarashi Moise waburaniraga Twagirayezu Alexis na Twagirayezu Vanessa akavuga ko Ndizeye Alphonse ufite ibyo yongeye ku nyubako zabo mu buriganya (mauvaise foi) yabikuraho. Kuva ku gace ka [54] kugera ku ka [58] k'iyo ncarubanza, cyane cyane mu gace ka [58] Urukiko rukaba rwarasobanuye mu buryo bwumvikana kandi butarimo urujijo ko inyubako irebwa n'ivanwaho ryategetswe nta yindi itari iy'ubucuruzi Ndizeye Alphonse yashyize mu kibanza cyari gisanzwemo inzu yo guturamo yaburanwaga muri urwo rubanza rushingiye ku nkomoko y'amafaranga yaguzwemo iyo nzu. Guhuza ibyo bisobanuro n'icyemezo cy'Urukiko (dispositif) bikaba rero byafasha uruhande rwa Ndizeye Alphonse kumva neza icyo rwategetswe n'Urukiko, rwashobora kubikoraho ubwumvikane n'abatsinze urubanza bikaba ari amahire ku mpande zombi, ariko ubwo bwumvikane butashoboka urubanza kuri iyo ngingo rukarangizwa nk'uko byategetswe n'Urukiko hatitawe ku kureba ko hari uwabihomberamo kuko icyo cyemezo cyamaze gufatwa nyuma yo gusuzuma ibyo byose.

[24] Urukiko rurasanga, dosiye y'Urubanza RCAA00037/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 12/07/2019 igaragaza ko Urukiko rwategetse Ndizeye Alphonse gukuraho inyubako yashyize mu kibanza cya Twagirayezu Vanessa na Twagirayezu Alexis, rwemeza ko urubanza RCA00157/2017HC/KIG rwaciwe ku wa 12/01/2018 n'Urukiko Rukuru, ruhindutse gusa ku bijyanye n'uko Ndizeye Alphonseagomba gukuraho inyubako yashyize mu kibanza cya Twagirayezu Vanessa na Twagirayezu Alexis,rutegeka kandi Ndizeye Alphonse guha Twagirayezu Vanessa na Twagirayezu Alexis 1.500.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubaza bagenewe kuri urwo rwego; bityo gushyira mu bikorwa icyo cyemezo bikaba nta mpaka biteye.

[25] Urukiko rurasanga kandi dosiye y'Urubanza RC00007/2020/CA igaragaza ko Ndizeye Alphonse yaregeye Urukiko ku wa 14/11/2019, Umuhesha w'Inkiko Uwitije Rumena Janvier yaratangiye kurangiza urubanza mu nyandiko yo ku wa 30/10/2019, imusaba gutangaimfunguzo za portail n'iz'inzu bitarenze ku wa 04/11/2019, Urukiko rukaba rusanga iyo ari impamvu ifatika yerekana ko kugeza ubwo ikibazo Ndizeye Alphonse yari afite gusa ari icyo kugira ubutwari bwo gutinyuka kurangiza urubanza ku neza nk'uko biteganywa n'amategeko, bigatuma umuhesha w'inkiko amuteguza ko agiye kwifashisha ingufu za Leta mu kururangiza.

[26] Urukiko, rushingiye ku bimaze gusobanurwa haruguru, rurasanga rero Ndizeye Alphonse yararegeye uru Rukiko gukemura impaka atagaragaza uwo bari barigeze bazigirana n'urwegobaba barazigiranyeho mbere y'uko afata icyemezo cyo kurega, bityo ko nta mpaka zihari kw'irangizwa ry'imanza RC00286/2016/TGI/GSBO-RCA00157/2017/HC/KIG-RCAA00037/2018/CA zerekeranye n'uburyo Ndizeye Alphonse agomba gukura inyubako ye ku mutungo waburanwe hagati ye na Twagirayezu Alexis & Twagirayezu Vanessa, atabikora ku neza cyangwa se ku bundi bwumvikane yabigiranaho n'abamutsinze mu rubanzamu gihe cyose bigishoboka, bigakorwa mu gihe gikwiye ku ngufu za Leta n'umuhesha w'inkiko nk'uko biteganywa n'ingingo ya 247 n'iya 248 z'Itegeko Nº22/2018 ryo ku wa 29/04/2018 zibukijwe haruguru. Muri icyo gihe gukuraho inyubako bikaba nta kindi byaba bivuze mu rurimi rw'Ikinyarwanda urubanza rurangizwa rwaburanwemo rukanacibwamo kitari ukuyisenya no kuvanaho ibikoresho byari biyubatse.

Kumenya niba ifatira rya burundu ryari ngombwa ku bukode bwari busanzwe buhabwa Ndizeye Alphonse, ingano y'amafaranga amaze kuboneka n'amerekezo y'ibyafatiriwe byasuzumwa muri uru rubanza

[27] Ku wa 16/11/2020, Me Twayigize Jean Claude uhagarariye Ndizeye Alphonse yashyizemuri system ya IECMS inyandiko (Notes de plaidoiries), yereka Urukiko impaka ziri mu rubanza bifuza ko rwabakemurira, iya mbere avuga ikaba iyo kumenya niba haragombaga ifatira rya burundu ku miryango itandatu ikodeshwa mu gihe abatsinze urubanza bagombaga kwishyurwa gusa 5.350.000Frw

yategetswe mu manza zagombaga kurangizwa, iya kabiri iyokumenya uko bizagenda mu gihe mu nyubako y'iremezo yatsindiwe harimo inyubako ze. Muriiyo nyandiko ya note de plaidoirie avuga kandi ko iyo nzu Ndizeye Alphonse yatsindiwe yari yaraguzwe 30.010.000Frw, ko kugeza ubu ifite agaciro ka 63.000.000Frw, mu gihe iyo yubatse ku ruhande ifite agaciro ka 77.000.000Frw ari yo Umuhesha w'Inkiko yafatiriyeho ubukode, agasaba ko uruhande rwatsinze rwayimugurira.

[28] Me Moise Nkundabarashi uhagarariye Twagirayezu Alexis na Twagirayezu Vanessa, akanunganira Uwitije Rumena Janvier avuga ko ikirego kiri aha cyatanzwe naNdizeye Alphonse ku wa 14/11/2019, inama ntegurarubanza yacyo iba ku wa 16/10/2020, ko kuva urubanza rutangiye kurangizwa kugeza hatanzwe ikirego cy'impaka ku irangizwa ry'urubanza hakanasozwa inama ntegurarubanza icyo kibazo cy'ubukode n'ifatira ryabwo cyari kitaravuka, akabona ko kucyongera mu byaregewe hakoreshejwe uburyo bwa note de plaidoirie ari uburyo bwo guhindura ikirego uko cyari cyatanzwe mbere kandi ko binyuranyije n'ingingo ya 6 y'Itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirizey'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, agasoza asaba ko ibyo by'ubukode bidasuzumwa muri uru rubanza.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 6 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibikurikira: "*Ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragarira mu myanzuro iregera Urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegurarubanza ku manza iteganyijwemo. Mu iburanisha, umuburanyi ntashobora guhindura ikiburanwa ababuranyi bose batabyemeye*";

[30] Urukiko rurasanga impamvu z'ikirego cyatanzwe na Ndizeye Alphonse muri uru rubanza zigasuzumwa mu nama ntegurarubanza yasojwe ku wa 16/10/2020 ari "*impaka zerekeranye n'ibyo yongeye ku nzu iburanwa ariko Inkiko zose zikaba ntacyo zabivuzeho kandi zaramusabye kubikuraho, akibaza niba azazisenya cyangwa niba azagurira abo baburana ubutaka cyangwa se bazamusubiza ibyo yashyizeho"*, abo arega baba ari nabyo bireguraho kugeza hasojwe inama ntegurarubanza.

[31] Urukiko rurasanga ikibazo cy'ifatira ry'ubukode ku nzu, ingano y'amafaranga amaze kuva muri iryo fatira ndetse n'amerekezo y'amafaranga yafatiriwe Ndizeye Alphonse atarigeze akiregera ngo anakigaragaza nk'igiteye impaka hagati y'ababuranyi kugeza hasojwe inama ntegurarubanza.

[32] Hashingiwe ku biteganywa n'ingingo ya 6 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimon'iz'ubutegetsi yibukijwe haruguru, no ku bimaze gusobanurwa haruguru, Urukiko rurasangaibijyanye n'ifatira rya burundu ku bukode bwari busanzwe buhabwa Ndizeye Alphonse, ingano y'amafaranga amaze kuboneka n'amerekezo y'ibyafatiriwe ari ibiregerwa bishyabyongerewe mu rubanza na Ndizeye Alphonse mu iburanisha kandi abandi bose baburana bakaba batabyemera, bityo ko bitagomba gusuzumirwa muri uru rubanza, kuko byatanzwe muburyo bunyuranyije n'amategeko.

Ku bijyanye n'indishyi, amafaranga y'ikurikiranarubanza n'ay'igihembo cyaAvoka asabwa n'ababuranyi

UKO URUKIKO RUBIBONA

[33] Me Twayigize Jean Claude, uhagarariye Ndizeye Alphonse, ashingiye ku biteganywa n'ingingo ya 254, igika cya 4 y'Itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi asaba Urukiko gutegeka umuhesha w'Inkiko Uwitije Rumena Janvier kwishyura Ndizeye Alphonse indishyi zingana na 5.000.000Frw ku bw'amakosa yamukoreye,1.000.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza.

[34] Me Nkundabarashi Moise, mu mwanya wa Twagirayezu Alexis na Twagirayezu Vanessa aburanira na Uwitije Rumena Janvier yunganira, asaba ko Urukiko rutegeka Ndizeye Alphonse kubishyura 5.000.000 Frw y'indishyi zo gushorwa mu manza ku maherere, 1.000.000Frw y'ikurikiranarubanza na 2.000.000 Frw y'igihembo cya Avoka akanayatangira TVA.

UKO URUKIKO RUBIBONA

[35] 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, iteganya ko *"Ikirego cy'amafaranga y'ikurikiranarubanza, ari ikirego gishamikira ku kirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".*

[36] Urukiko rurasanga indishyi, amafaranga y'ikurikiranarubanza n'ay'igihembo cya avoka bisabwa na Ndizeye Alphonse nta shingiro bifite kuko atsindwa n'urubanza ku kiregerwa cy'iremezo.

[37] Ku bijyanye n'indishyi zingana na 5.000.000 Frw abaregwa basaba kubera gushorwa mu manza z'amaherere, Urukiko rurasanga nta shingiro zigomba guhabwa kuko ari uburenganzirabwa Ndizeye Alphonse bwo kuregera Urukiko rufite ububasha bwo gusuzuma ikibazo yumva afite, abaregwa bakaba nta kimenyetso cy'ikindi babona yaba yari agamije kitari icyo.

[38] Hakurikijwe ibiteganywa n'ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe hejuru,Urukiko rurasanga icyakora, Ndizeye Alphonse agomba guha buri ruhanderuregwa amafaranga y'igihembo cya Avoka n'ikurikiranarubanza, kuko biyambaje Avoka wokubaburanira ndetse no kunganira mu rubanza ndetse bagira ibyo batakaza barukurikirana, ariko ayo mafaranga akaba agomba kugenwa mu bushishozi bw'Urukiko, kuko ayo basaba arimenshi hakurikijwe imirimo yakozwe ku rubanza n'igihe rumaze mu Rukiko, bityo akaba agomba guha buri ruhande 500.000Frw y'igihembo cya Avoka na 100.000Frw y'ikurikiranarubanza.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ikirego cyatanzwe na Ndizeye Aphonse nta shingiro gifite;

[40] Rwemeje ko nta mpaka ziri mu irangiza ry'imanza RC00286/2016/TGI/GSBO-RCA 00157/2017/HC/KIG- RCAA 00037/2018/CA ku bijyanye n'uburyo Ndizeye Alphonse agomba gukura inyubako ye ku mutungo watsindiwe na na Twagirayezu Alexis na Twagirayezu Vanessa muri izo manza;

[41] Rutegetse Ndizeye Alphonse kwishyura Uwitije Rumena Janvier 500.000Frw y'igihembo cya Avoka na 100.000Frw y'ikurikiranarubanza;

[42] Rutegetse Ndizeye Alphonse kwishyura Twagirayezu Alexis na Twagirayezu Vanessa bafatanyije 500.000Frw y'igihembo cya Avoka na 100.000Frw y'ikurikiranarubanza;

[43] Ruvuze ko amafaranga yatanzweho ingwate y'igarama ry'uru rubanza na Ndizeye Alphonse ahwanye n'ibyarukozwemo.