# NYIRAMATAMA v MUHIRWA

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC 00008 /2021/CA (Kaliwabo, P.J.) 25 Gashyantare 2022]

*Amategeko agenga imiburanishirize y'imanza mbonezamubano – Gukosoza cyangwa gusobanuza urubanza – Urubanza rukosora cyangwa rusobanura urundi rugarukira mu gusobanura amagambo yaba adasobanutse ku buryo buhagije.*

*Itegeko rigenga imicungire y'umutungo w'abashyingiranywe impano n'izungura – Impano – Umunani – Utanga umunani niwe ugena umutungo atangaho umunani, ntabwo uhabwa umunani yihitiramo umutungo ashaka.*

**Incamake y'Ikibazo:** Uru rubanza rwatangiye Muhirwa Issa arega Nyiramatama, Bizimana, Kanani, Muhirwa Amouri na Mukakimenyi mu Rukiko rw'Ibanze rwa Gacurabwenge, asaba kuzungura umutungo umubyeyi we Habimana yari guhabwaho umunani. Urukiko rwemeje ko ikirego cye gifite ishingiro, ko abo arega batsinzwe naho Muhirwa Issa atsinze.

Nyiramatama na bagenzi be ntibishimiye iyo mikirize y'urubanza, maze barujuririra mu Rukiko Rwisumbuye rwa Muhanga, barusaba gutesha agaciro urubanza rwaciwe n'Urukiko rw'Ibanze kuko Muhirwa Issa adashobora kuzungura Habimana kandi atari umuhungu we kuko atazwi mu muryango wabo. Urukiko Rwisumbuye rwemeje ko ubujurire bwa Nyiramatama na bagenzi be, nta shingiro bufite, rwemeza ko urubanza rujuririrwa rudahindutse, rutegeka Nyiramatama na bagenzi be gufatanya kwishyura Muhirwa indishyi.

Umuhesha w'inkiko agiye kurangiza urubanza rwaciwe n'Urukiko Rwisumbuye rwa Muhanga, abaregwa bamumenyesha ko Urukiko rutigeze rugena aho Muhirwa Issa agomba guhabwa ndetse n'ingano yaho, ko bazamuha aho bashaka.

Muhirwa Issa amaze kubona ko irangizwa ry'urubanza ridashobotse yatanze ikirego mu Rukiko rwaruciye, asobanuza urwo urubanza ashingiye ku kuba Urukiko mu gufata icyemezo muri urwo rubanza rutarigeze rugena umunani n'ingano yawo. Yarusabye kwemeza ko ahabwa isambu ibaruye kuri kuri UPI 2/08/12/05/2375, kuko ariyo yasigaye nyuma yo guha abavandimwe ba se bose imigabane yabo. Urukiko Rwisumbuye rwa Muhanga rwemeje ko ikirego cya Muhirwa Issa gisaba gusobanuza urubanza kitakiriwe ku mpamvu z'uko yarengeje igihe cy'ukwezi cyo gusobanuza urubanza.

Muhirwa Issa na none yajuririye Urukiko Rukuru, Urugereko rwa Nyanza, arusaba gutegeka ko ahabwa umunani ubaruye kuri UPI 2/08/12/05/2375. Yasabye ko mu kwakira urubanza rwe, Urukiko Rukuru rwashingira ku rubanza RS/Rect/RC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga rwemeza ko ikirego gikosorwa rutitaye ku gihe cy'imyaka ine ishize icyemezo cyasabirwaga gukosorwa gifashwe. Urukiko Rukuru, rwaciye urubanza rutegeka Nyiramatama guha Muhirwa Issa umutungo ubaruwe kuri UPI: 2/08/12/05/2375 nk'umunani wagombaga kugenerwa umubyeyi we Habimana.

Nyiramatama yasubirishijemo urubanza rwaciwe n'Urukiko rukuru ku mpamvu z'akarengane, avuga ko Urukiko rwageneye Muhirwa Issa isambu yihitiyemo ubwe aho kumuha iyo yamugeneye. Nyuma yo gusuzuma inyandiko isaba kurenganurwa, Perezida w'Urukiko rw'Ikirenga yategetse ko ikirego cyakirwa kigashyikirizwa Urukiko rw'Ubujurire kugira ngo rukiburanishe. Muhirwa Issa yabyukije inzitizi yo kutakira ikirego cyatanzwe na Nyiramatama kuko ngo adafite ubushobozi bwo gutanga ikirego bitewe n'uburwayi bwo mu mutwe afite. Uhagarariye Nyiramatama yireguye kuri iyi nzitizi avuga ko Muhirwa Issa atagaragaza Urukiko rwambuye ububasha n'ubushobozi Nyiramatama.

Urukiko rwemeje ko iyo nzitizi nta shingiro ifite kuko nta cyemezo cy'Urukiko gihamya ko Nyiramatama afite ubumuga bwo mu mutwe ngo rumwambure ububasha n'ubushobozi.

Mu rubanza mu mizi uhagarariye Nyiramatama avuga ko yagiriwe akarenganemu rubanza rusubireiswamo kuko o Urukiko rwategetse ko aha Muhirwa Issa umunani yihitiyemo, kandi umunani ugomba kugenwa na nyiri kuwutanga. Muhirwa yireguye avuga ko Urukiko rwamuhaye umutungo ufite UPI: 2/08/12/05/2375 kuko ariwo nyirakuru yari yaramweretse ko azamuha, avuga ko nta kosa Urukiko Rukuru rwakoze mu kumugenera ubwo butaka, asaba ko urubanza rwaguma uko rwaciwe. Urukiko rwemeje ko Nyiramatama yagiriwe akarengane kuko Urukiko rwageneye Muhirwa umunani atigeze amuha ku bushake bwe, bityo akaba agomba guhabwa ubutaka yahawe na Nyiramatama bubaruwe kuri UPI: 2/08/12/05/2382 naho ubutaka bubaruwe kuri UPI: 2/08/12/05/2375 bugasubizwa mu maboko ya Nyiramatama.

**Incamake y'icyemezo:**1. Urubanza rukosora cyangwa rusobanura urundi rugarukira mu gusobanura amagambo yaba adasobanutse ku buryo buhagije. Bityo Urubanza rwasabiwe gusobanurwa kuko rutigeze ruvuga umutungo wagombaga gutangwaho umunani, gukora iperereza hashakishwa uwo mutungo haba habayeho kurenga imbibi z'ikiburanwa.

3. Utanga umunani niwe ugena umutungo atangaho umunani, ntabwo uhabwa umunani yihitiramo. Ikirego gisubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.

**Amategeko yashingiweho:**
Itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 110, 140
Itegeko Nº 27/2016 ryo kuwa 08/07/2016 rigena imicungire y'umutungo w'abashyingiranywe, impano n'izungura, Ingingo ya 27
Itegeko N° 22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, Ingingo, 42
Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka, ingingo ya 34

**Nta manza zifashishijwe.**

## Urubanza

# I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Gacurabwenge, Muhirwa Issa arega Nyiramatama Hadidja, Bizimana Youssuf, Kanani Moussa, Muhirwa Amouri na Mukakimenyi Saidati asaba kuzungura umutungo umubyeyi we Habimana Saleh witabye Imana yagombye guhabwaho umunani.

[2] Kuwa 29/04/2019 Urukiko rw'Ibanze rwa Gacurabwenge rwaciye urubanza rwemeza ko ikirego cye gifite ishingiro, ko Habimana Saleh yari afite uburenganzira bwo guhabwa umunani nk'uko byagenze ku bandi bose bavukana, bityo ko umunani we uzungurwa n'umuhugu we Muhirwa Issa. Rwemeje ko Nyiramatama Hadidja, Mukakimenyi Saidath, Kanani Moussa, Bizimana Youssuf na Muhirwa Amouri batsinzwe naho Muhirwa Issa atsinze. Rutegeka Nyiramatama Hadidja kugaragaza umunani Habimana Saleh yagombaga guhabwa no kuwushyikiriza umuzungura we Muhirwa Issa.

[3] Nyiramatama Hadidja, Mukakimenyi Saidath, Kanani Moussa, Bizimana Youssuf na Muhirwa Amouri ntibishimiye iyo mikirize y'urubanza, maze barujuririra mu Rukiko Rwisumbuye rwa Muhanga, ubujurire bwabo buhabwa RCA00054/2019/TGI/MHG, barusaba gutesha agaciro urubanza RC000228/2018/TB/GAC kuko Muhirwa Issa adashobora kuzungura Habimana Saleh kandi atari umuhungu we kuko atazwi mu muryango we.

[4] Kuwa 28/11/2019, Urukiko Rwisumbuye rwa Muhanga rwakijije urubanza, rwemeza ko ubujurire bwa Nyiramatama Hadidja , Bizimana Youssuf, Kanani Moussa, Muhirwa Amouri na Mukakimenyi Saidath nta shingiro bufite, rwemeza ko urubanza RC00228/2018/TB/GAC rudahindutse, rutegeka Nyiramatama Hadidja , Bizimana Youssuf, Kanani Moussa, Muhirwa Amouri na Mukakimenyi Saidath gufatanya guha Muhirwa Issa indishyi zingana n'amafaranga ibihumbi magana atandatu na mirongo itanu (650.000Frw), ziyongera ku zo yagenewe n'Urukiko rw'Ibanze rwa Gacurabwenge mu rubanza RC00228/2018/TB/GAC.

[5] Ku wa 16/1/2020, Umuhesha w'inkiko w'umwuga yagiye kurangiza urubanza RCA00054/2019/TGI/MHG, abaregwa bamumenyesha ko Urukiko rutigeze rugena aho MUHIRWA Issa agomba guhabwa ndetse n'ingano yaho, ko bazamuha aho bashaka.

[6] Muhirwa Issa amaze kubona ko irangizwa ry'urubanza ridashobotse yatanze ikirego mu Rukiko Rwisumbuye rwa Muhanga, cyandikwa kuri RS/INTERT/RC00001/2020/TGI/MHG, asobanuza rubanza RCA00054/2019/TGI/MHG rwaciwe n'urwo Rukiko ku wa 28/11/2019, ashingiye ku kuba Urukiko mu gufata icyemezo muri urwo rubanza rutarigeze rugena umunani n'ingano yawo. Yarusabye kwemeza ko ahabwa isambu ibaruye kuri kuri UPI 2/08/12/05/2375 iherereye mu Mudugudu wa Nyagacaca, Akagali ka Ruyenzi, Umurenge wa Runda, Akarere ka Kamonyi ikaba ifite ubuso bungana na 1890.0 m2, kuko ariyo yasigaye nyuma yo guha abavandimwe ba se bose imigabane yabo.

[7] Ku wa 31/01/2020 Urukiko Rwisumbuye rwa Muhanga rwakijije urubanza maze rwemeza ko ikirego Muhirwa Issa yarushyikirije asaba gusobanuza urubanza RCA00054/2019/TGI/MHG rwaciwe tariki ya 28/11/2019 kitakiriwe ku mpamvu z'uko yarengeje igihe cy'ukwezi cyo gusobanuza urubanza, kibarwa uhereye igihe urubanza rusobanuzwa rwaciriwe.

[8] Muhirwa Issa na none yajuririye Urukiko Rukuru, Urugereko rwa Nyanza kuri RS/RECT/RC0000 4/2020/HC/NYZ, arusaba gutegeka ko ahabwa umunani wa se mu mugabane w'umubyeyi we ubaruye kuri UPI 2/08/12/05/2375. Yasabye ko mu kwakira urubanza rwe, hashingirwa ku rubanza RS/Rect/RC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/5/2019, aho Urukiko rwemeye kwakira ikirego cyatanzwe na Rutagarama ubwo yakosozaga urubanza RCAA0007/15/SC rwari rwaraciwe kuwa 13/11/2015, maze Urukiko rw'Ikirenga rukemeza ko ikirego gikosorwa rutitaye ku gihe cy'imyaka ine icyemezo cyasabirwaga gukosorwa cyafatiwe.

[9] Mbere yo guca urubanza, Urukiko rwakoze iperereza aho umutungo wa Nyiramatama uherereye mu Kagari ka Ruyenzi, Umurenge wa Runda maze Muhirwa Issa yerekana umutungo ubaruwe kuri UPI: 2/08/12/05/2375 avuga ko ariwo agomba guhabwaho umunani kuko ariwo Nyiramatama yari yaramweretse ko azamuha naho Kanani wari uhagarariye Nyiramatama arwereka umutungo ubaruye kuri UPI: 2/08/12/05/2382 avuga ko ariwo Nyiramatama ageneye Muhirwa nk'umunani wagombaga guhabwa umubyeyi we Habimana Saleh.

[10] Ku wa 10/12/2020 Urukiko Rukuru, Urugereko rwa Nyanza rwaciye urubanza rutegeka nyiramatama guha Muhirwa Issa umutungo ubaruwe kuri UPI: 2/08/12/05/2375 nk'umunani wagombaga kugenerwa umubyeyi we Habimana Saleh, rutegeka ko uru rubanza rugize rumwe n'urubanza rusobanurwa arirwo RCA00054/2019/TGI/MHG.

[11] Nyiramatama Hadidja yasubirishijemo urubanza RS/RECT/RC 00004/2020/HC/NYZ ku mpamvu z'akarengane, avuga ko Urukiko Urukiko rwageneye Muhirwa Issa isambu yihitiyemo ubwe aho kumuha iyo yamugeneye. Nyuma yo gusuzuma inyandiko isaba kurenganurwa, Perezida w’Urukiko rw’Ikirenga yategetse ko ikirego cyakirwa kigashykirizwa Urukiko rw’Ubujurire kugira ngo rukiburanishe, ikirego cye cyandikwa kuri RS/INJUST/RC 00008/2021/CA.

[12] Urubanza rwaburanishijwe kuwa 02/02/2022 Nyiramatama Hadidja ahagarariwe na Me Muhikira Jean Claude naho Muhirwa Issa yunganiwe na Me Ntahomvukiye Edouard. Mbere yo kwisobanura ku mpamvu zo gusubirishamo urubanza, Muhirwa Issa yabyukije inzitizi yo kutakira ikirego cyatanzwe na Nyiramatama Hadidja kuko ngo adafite ubushobozi (capacité) bwo gutanga ikirego mu Rukiko bitewe n’uburwayi bwo mu mutwe afite.

[13] Me Ntahomvukiye Edouard wunganira Muhirwa Issa avuga ko ubwo burwayi bwe bwo mu mutwe bwashimangiwe n’Urukiko Rukuru ,Uregereko rwa Nyanza, mu gika cya [17] cy’urubanza RS/RECT/RC 00004/2020/HC/NYZ, aho rwagize ruti:“*Urukiko rurasanga MUHIRWA Issa yaragombaga guhabwa umunani na NYIRAMATAMA Hadidja ariko kubera uburwayi bwo mu mutwe afite ntabwo ashobora kubikora”, mu cya [18] rugira ruti:”Kuba urukiko rwaraciye urubanza ntirugaragaze umunani wahawe MUHIRWA Issa ni impamvu ituma uru rubanza rugomba gusobanurwa kugira ngo MUHIRWA Issa amenye ingano y’umunani yahawe ariko n’ibyo urukiko rwari rwakoze byo kureka umubyeyi agatanga umunani abyibwirije nta kibazo cyarimo ikibazo nuko uwo mubyeyi atabikoze kugeza ubwo afashwe n’uburwayi bwo mu mutwe*”.

[14] Akomeza avuga ko ibyo byagarutsweho no muri raporo y’Urukiko Rukuru Urugereko rwa Nyanza yo ku wa 23/07/2020 igaragaza ko Urukiko rwagiye gukora iperereza aho ikiburanwa giherereye, rukahasanga uwitwa Kanani Moussa watoranijwe n’abavandimwe be kugira ngo ahagararire umuryango wa Bishogori wasize umupfakazi witwa Nyiramatama Hadidja ufite ibibazo by’uburwayi bwo mu mutwe. Anavuga ko nyuma yuko Urukiko rugaragaje ko afite uburwayi bwo mu mutwe nta wabivuguruje, bityo ko ibikubiye mu rubanza RS/RECT/RC 00004/2020/HC/NYZ bigomba gufatwaho ukuri, ko rero Nyiramatama Hadidja adafite ubushobozi (capacité) bwo gutanga ikirego kubera uburwayi bwo mu mutwe afite.

[15] Me Muhikira Jean Claude uhagarariye Nyiramatama Hadidja yireguye kuri iyi nzitizi avuga ko umuntu wese avukana ububasha n’ubushobozi, akabyamburwa n’urukiko hakurikijwe amategeko abigenga, ko Muhirwa Issa atagaragaza Urukiko rwabyambuye Nyiramatama Hadidja. Yasobanuye ko intege nkeya Nyiramatama afite kubera imyaka y’izabukuru ari nazo yari afite kuva izi manza zatangira ko biramutse byemejwe ko adafite ubushobozi byaba bivuze ko imanza yaciriwe zose zavaho kuko yaba yaraziburanye ubwo bushobozi ntabwo afite.

[16] Urukiko rumaze kumva imiburanire y’impande zombi rwasanze inzitizi yabyukijwe na MUHIRWA Issa nta shiniro ifite kuko ingingo ya 12 y’Itegeko N° 32/2016 ryo kuwa 28/08/2016 rigenga abantu n’umuryango iteganya ko umuntu wese afite ubushobozi bwo gukoresha uburenganzira mbonezamubano bwe keretse aho amategeko ateganya guhagararirwa cyangwa kunganirwa. Naho ingingo ya 150 y’iri Tegeko ikavuga ko umuntu mukuru ufite ubumuga bwo mu mutwe yamburwa ubushobozi n’urukiko rubifitiye ububasha.

[17] Urukiko rurasanga, uretse no kuba nta cyemezo gihamya ko Nyiramatama afite ubumuga bwo mu mutwe nta n’Urukiko rubifitiye ububasha rwigeze rumwambura ubushobozi, bityo ibyemezo afata ku bwe cyangwa ahagarariwe bikaba bifite agaciro.

[18] Rurasanga kandi, Urukiko Rukuru rutarafashe icyemezo cy’uko Nyiramatama adafite ubushobozi kuko, uretse no kuba bitari mu bubasha bwarwo, ariko kandi n’iyo rubyemeza utyo rwari

guhera ko ruhagarika iburanisha kugira ngo Nyiramatama asimburwe mu rubanza mu mwanya wo gufatira icyemezo umuburanyi udafite ubushobozi.

[19] Urukiko rwakomereje iburanisha mu mizi y'urubanza, hasuzumwa akarengane Nyiramatama Hadidja avuga yatewe no kuba Muhirwa Issa yarahawe umutungo atamugeneye.

# II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

## A. Gusuzuma niba kuba urukiko rwaragennye umutungo MUHIRWAIssa ahabwaho umunani byarateye NYIRAMATAMA Hadidja akarengane.

[20] Me Muhikira Jean Claude yaburanye avuga ko Nyiramatama Hadidja ahagarariye yagiriwe akarengane gakabije mu rubanza RS/RECT/RC00004/2020/HC/NYZ, aho Urukiko rwategetse ko aha Muhirwa Issa umunani yihitiyemo, kandi umunani ugomba kugenwa na nyiri kuwutanga. Asobanura ko Muhirwa Issa yareze ashaka umunani, arawerekwa avuga ko ari muto, nyuma arajijisha atanga ikirego cyo gusobanuza urubanza. Yavuze ko Urukiko rwaje mu iperereza Muhirwa Issa akarwereka umutungo yifuza arubeshya ko ariho Nyiramatama yamwemereye ko azamuhaho umunani ngo Urukiko rukaba rwaremeye kumuha umutungo yihitiyemo rwirengagije uwo Nyiramatama yerekanye kuko gutanga umunani atari itegeko.

[21] Akomeza avuga ko ibyo Urukiko rwakoze ari ukuvogera umutungo w'umuntu kandi ingingo ya 29 igika cya 2 y'Itegeko Nshinga rya Republika y'u Rwanda ibibuza. Asaba Urukiko rw'Ubujurire gukosora ayo makosa maze rugategeka ko Muhirwa Issa ahabwa ikibanza kibaruye kuri UPI: 2/08/12/05/2382 giherereye mu Mudugudu wa Nyagacaca, Akagari ka Ruyenzi, Umurenge wa Runda, Akarere ka Kamonyi, Intara y'Amajyepfo kuko aricyo yagenewe na Nyiramatama. Yasabya ko ikibanza kibaruye kuri UPI: 2/08/12/05/2375 cyagaruka mu mutungo wa Nyiramatama kuko Muhirwa yakihaye abishyigikiwemo n'Uruiko Rukuru. Mu gusoza, Me Muhikira yasabye Urukiko kuzashingira ku ngingo ya 27 y'Itegeko Nº 27/2016 ryo kuwa 08/07/2016 rigena imicungire y'umutungo w'abashyingiranywe, impano n'izungura aho isobanura ibirebana n'impano.

[22] Muhirwa Issa yisobanuye avuga ko Urukiko rwamuhaye umutungo ufite UPI: 2/08/12/05/2375 kuko ariwo nyirakuru Nyiramatama yari yaramweretse ko azamuha, ko nta kigaragaza ko yategetse Urukiko kuhamugenera kuko nta bushobozi abifitiye, ahubwo yahagenewe kubera ko yavuze ko ariho yahawe. Yasobanuye ko uyu mutungo uherereye aho abavukana na Habimana Saleh bahaweho umunani naho ikibanza kibaruwe kuri UPI: 2/08/12/05/2382 kikaba giherereye ahantu habi kandi ko Kanani ariwe wacyeretse Urukiko bidaturutse ku bushake bwa Nyiramatama.

[23] Me Ntahomvukiye Edouard avuga ko Nyiramatama Hadidja yari asanzwe azi ko Muhirwa Issa ari umwana wa Habimana Saleh akaba umwuzukuru we, kuko mu guha abana be bose iminani yasigaje umunani wagombaga guhabwa Habimana Saleh witabye Imana, akawereka Muhirwa Issa ariko akamubwira ko atawumuha wenyine kuko hari mushiki we se yabyaye i Butare, azawubaha bombi amaze kuza, ko yabonye uyu mukobwa ataboneka akabona kugana inkiko maze inkiko zitegeka Nyiramatama Hadidja kugaragaza umunani Habimana Saleh yagombaga guhabwa no kuwushyikiriza umuzungura we Muhirwa Issa.

[24] Muhirwa Issa yunganiwe na Me Ntahomvukiye yavuze ko nta kosa Urukiko rwakoze mu kumugenera ubutaka bubaruwe kuri UPI: I2/08/12/05/2375 kuko aribwo yeretswe na Nyiramatama, ko abavandimwe ba Habimana Saleh aribo bashaka kumuhuguza, asaba ko urubanza rwaguma uko rwaciwe.

# UKO URUKIKO RUBIBONA

[25] Dosiye igaragaza ko Muhirwa Issa yatanze ikirego asaba kuzungura umutungo w'umubyeyi we Habimana Saleh yagombye guhabwaho umunani na Nyiramatama Hadidja.

[26] Dosiye igaragaza kandi ko Urukiko rw'Ibanze rwa Gacurabwenge rwategetse Nyiramatama Hadidja kwereka Muhirwa Issa umunani wagombaga guhabwa umubyeyi we Habimana Saleh, iki cyemezo aba ari nacyo gifatwa mu bujurire bwaciwe n'Urukiko Rwisumbuye rwa Muhanga.

[27] Uru rubanza rushingiye ku kuba Urukiko Rukuru, mu gukemura ikirego gisobanura ikindi cyatanzwe na Muhirwa Issa, rwaramugeneye ubutaka bubaruwe kuri UPI : 2/08/12/05/2375 mu gihe Nyiramatama avuga ko yagombye guhabwa ubutaka bubaruwe kuri UPI : 2/08/12/05/2382.

[28] Urukiko rurasanga uru rubanza rugizwe n'ibibazo 2 bigomba gusobanurwa ku rwego rw'amategeko aribyo:

Imbago z'ikirego kiregera gusobanura urubanza.

Ikibazo cy'umunani n'uburyo utangwa.

**a. Ku birebana n'ikirego kiregera gusobanura urubanza**

[29] Ingingo ya 140 y'Itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu gika cyayo cya mbere ivuga ko urubanza rukosora urundi rukosora gusa amakosa y'imyandikire. Nubwo ibivugwa muri iki gika bigaruka gusa ku rubanza rukosora urundi nyamara kandi n'urubanza rusobanura urundi narwo rugarukira mu gusobanura amagambo yaba adasobanutse ku buryo buhagije hatabayeho kwongera izindi ngingo zitavuzwe mu rubanza rusabirwa gukosorwa.

[30] Urukiko rurasanga, hakurikijwe ingingo ya 140 y'Itegeko N°22/2018 rivuzwe haruguru Urukiko Rukuru rwararenze imbibi z'ikirego gisobanuza ikindi kuko urubanza rwasabiwe gusobanurwa rutigeze ruvuga umutungo wagombaga gutangwaho umunani, bityo gukora iperereza hashakishwa umutungo ugomba guhabwa Muhirwa Issa bikaba ari impaka zitaburanywe mu rubanza RCA00054/2019/TGI/MHG rusabirwa gusobanura.

[31] Urukiko rurasanga, nubwo bimeze bityo, iri perereza ryaratumye Nyiramatama Hadidja agaragaza umuntungo avuga ko ahayeho Muhirwa umunani, igikorwa atari yarakoze mbere y'uko iperereza rikorwa,iyi ikaba yarabaye inzira yo gukemura impaka zari zabaye mu kurangiza urubanza.

**b. Ku birebana n'umunani wagombaga guhabwa**

[32] Urukiko rurasanga ikibazo cy'umunani uhabwa abana giheruka mu Itegeko N° 22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura aho mu ngingo yaryo ya 42 yavugaga ko : "itangwa ry'umunani ari igikorwa ababyeyi bakora bakiriho kigamije kugabira umutungo abana babo cyangwa abababakomokaho bagahita bawegukana, bikitwa ko bashoje inshingano yo kubarera no kububakira".

[33] Urukiko rurasanga igihe[1] Muhirwa Issa yaregeraga guhabwa umunani wagombaga guhabwa umubyeyi we Habimana Saleh, nta Tegeko ryategekaga ababyeyi gukora iki gikorwa. Ahubwo, umubyeyi ku bushake bwe akaba ashobora gutaga impano ku muntu uwo ari we wese ugize

[1] Dosiye irerekana ko igarama ry'urubanza RC 00228/2018/TB/GAC ryatanzwe kuwa 22/06/2018

umuryango we nk'uko biteganywa mu ngingo ya 27 y'Itegeko Nº 27/2016 ryo kuwa 08/07/2016 rigena imicungire y'umutungo w'abashyingiranywe, impano n'izungura igira iti : " Impano itanzwe mu rwego rw'umuryango ni igikorwa cy'ubushake cyo gutanga cyangwa kwakira ikintu gifite agaciro nta kiguzi cyangwa uburenganzira kuri icyo kintu bikozwe n'abashyingiranywe bombi cyangwa umwe muri bo".

[34] Urukiko rurasanga, uburyo inkiko zemeje ko Nyiramatama agaragaza umutungo ahayeho umunani Muhirwa Issa buhuje n'igisobanuro cyari kigenewe umunani wateganywaga mu ngingo ya 42 y'Itegeko N° 22/99 ryavuzwe haruguru (nubwo iki kirego kitagengwa n'iri Tegeko ritari rikiriho), umunani ukaba waratangwaga nk'impano ababyeyi bihitiyemo mu mutungo wabo bayigenera ababakomokaho, Urukiko rukaba nta bundi buryo rwari kugena uyu mutungo uwo ariwo mu gihe Nyiramatama ntawo yerekenye.

[35] Urukiko rurasanga ku munsi urubanza RCA00054/2019/TGI/MHG rwabereye itegeko, Nyiramatama yari ategetswe kwereka Muhirwa Issa umunani amugeneye nk'uko Urukiko rwari rwabitegetse, kandi akihitiramo umutungo atanga nk'uko byasobanuwe kuko umunani igihe watangwaga wari ufite kamere y'impano.

[36] Urukiko rurasanga, nubwo Nyiramatama atakoze iyi nshingano ku gihe bigatuma Muhirwa Issa agana inkiko gusobanuza urubanza rwagombaga kurangizwa, nyamara kandi iperereza ryakozwe n'Urukiko Rukuru ku wa 14/09/2020 ryerekana ko Kanani Moussa wari uhagarariye Nyiramatama, yerekanye ubutaka bubaruwe kuri UPI: 2/08/12/05/2382 ko aribwo butanzweho umunani, Urukiko Rukuru rukaba rutaragombaga kugenera Muhirwa Issa UPI : 2/08/12/05/2375 kuko ibyo byari binyuranye n'ubushake bw'uwagombaga gutanga iyi mpano.

[37] Urukiko rurasanga imiburanire ya Muhirwa Issa ko umutungo yerekanye ariwo Nyiramatama yari yaramuhayeho umunani mbere yo kugana inkiko nta shingiro ifite kuko nta kimenyetso kigaragaza ko yari yaramuhaye umunani ngo aze kuwisubiza ariyo mpamvu Muhirwa Issa yamureze kumuha umunani wari kugenerwa Habimana Saleh aho kumurega kumusubiza umunani yamuhaye akawisubiza.

[38] Hashingiwe ku bivuzwe mu bika bibanziriza iki, Urukiko rurasanga Nyiramatama Hadidja yaragiriwe akarengane kuko Urukiko rwageneye Muhirwa Issa umunani atigeze amuha ku bushake bwe, bityo Muhirwa akaba agomba guhabwa ubutaka yahawe na Nyiramatama Hadidja bubaruwe kuri UPI : 2/08/12/05/2382 naho ubutaka bubaruwe kuri UPI : 2/08/12/05/2375 yagenewe n'Urukiko bugasubizwa mu maboko ya Nyiramatama Hadidja.

### c. Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[39] Muhirwa Issa ashingiye ku ngingo ya 110 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, no ku ngingo ya 34 y'amabwiriza n° 01/2014 agena ibihembo mbonera by'Abavoka, yasabye Urukiko rw'Ubujurire gutegeka Nyiramatama Hadidja kumwishyura amafaranga ibihumbi magana atanu (500.000Frw) y'ikurikirana rubanza, n'igihembo cy'Avoka kingana na miliyoni imwe y'amafaranga y'u Rwanda (1.000.000Frw) kubera kumutesha umutwe ashakisha umuhagararira muri uru rubanza mu buryo butunguranye, kuko atari azi ko azahura n'ibi bibazo no kumutesha umwanya bigatuma adakora akazi ke buri munsi.

[40] Me Muhikira Jean Claude Uhagarariye Nyiramatama Hadidja yiregura ku ndishyi zisabwa na Muhirwa Issa avuga ko ntazo akwiye guhabwa, kuko ari we nyirabayazana w'uru rubanza, no kuba nta kuntu yaba yemera ko ari umwuzukuru wa Nyiramatama Hadidja ngo amusabe umunani n'indishyi.

## UKO URUKIKO RUBIBONA

[41] Urukiko rurasanga amafaranga y'ikurikirana rubanza n'igihembo cya Avoka bishingira ku kuba, biturutse ku makosa y'umwe mu baburanyi, byaratumye undi ashorwa mu rubanza bituma akoresha umutungo we arukurikirana.

[42] Urukiko rurasanga inkomoko y'uru rubanza ari amakosa y'Urukiko Rukuru rwafashe uko bitari kamere y'umunani rugatanga umutungo wa Nyiramatama rushingiye ku cyifuzo cya Muhirwa Issa aho kwemeza umunani wari utanzwe na Nyiramatama nk'uko itegeko ribiteganya. Rurasanga Muhirwa Issa utsindwa n'urubanza agomba kwirengera amafaranga yakoresheje akurikirana uru rubanza n'igihembo cya Avoka wamuburaniye.

# III. ICYEMEZO CY'URUKIKO

[43] Rwemeje ko ikirego RS/INJUST/RC00008 /2021/CA gisubirishamo urubanza RS/RECT/RC00004/2020/HC/NYZ ku mpamvu z'akarengane cyatanzwe na Nyiramatama Hadidja gifite ishingiro.

[44] Rwemeje ko Muhirwa Isaa agomba guhabwa umutungo ubaruwe kuri UPI: 2/08/12/05/2382 nk'umunani ahawe na Nyiramatama Hadidja naho ubutaka bubaruye kuri UPI: 2/08/12/05/2375 yagenewe n'urukiko Rukuru bugasubizwa mu maboko ya Nyiramatama Hadidja.

[45] Rutegetse ko umutungo ubaruwe kuri UPI: 2/08/12/05/2382 uherereye mu Mudugudu wa Nyagacaca, Akagari ka Ruyenzi, Umurenge wa Runda, Akarere ka Kamonyi, Intara y'Amajyepfo wandukurwa kuri Nyiramatama Hadidja ukandikwa kuri Muhirwa Issa.

[46] Rutegetse ko umutungo ubaruwe kuri UPI: 2/08/12/05/2375 uherereye mu Mudugudu wa Nyagacaca, Akagari Ruyenzi, Umurenge wa Runda, Akarere ka Kamonyi, Intara y'Amajyepfo wandukurwa kuri Muhirwa Issa ukandikwa kuri Nyiramatama Hadidja.

[47] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.