UBUSHINJACYAHA v MUBARAKA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00273/2021/CA, (Kaliwabo, P.J.) 15 Nyakanga 2022]

Amategeko nshinjabyaha – Igabanyagihano – Impamvu nyoroshyacyaha – Nta cyabuza Umucamanza kugabanya igihano kugeza munsi y'igihano gito Itegeko ryateganyije iyo hari impamvu nyoroshyacyaha, mu gihe asanga ari bwo buryo bwo gutanga ubutabera buboneye.

Amategeko nshinjabyaha – Igihano – Mu kugena igihano, ingano ntoya y'urumogi uregwa yafatanywe ikwiye kwitabwaho kuko ingaruka zigera ku bantu bakeya ugereranyije n'abacuruza urumogi rwinshi.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha bukurikiranye Mubaraka ku cyaha cyo gucuruza ibiyobyabwenge, buvuga ko yafatanywe udupfunyika 67 tw'urumogi ko kandi yemeye ko arucuruza. Uregwa yaburanye yemera icyaha akurikiranweho, asaba imbabazi. Urwo Rukiko rwaciye urubanza rwemeza ko ahamwa n'icyaha cyo gucuruza ibiyobyabwenge bihambaye, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25ans) n'ihazabu ya 20.000.000Frw.

Uregwa yajuririye Urukiko Rukuru asaba kugabanyirizwa ibihano biruseho kuko ari ubwa mbere akoze icyaha, ko ari impfubyi yirera inarera barumuna be, ibyo byose ngo umucamanza akaba yarabyirengagije amuhanisha igihano kiremereye. Urwo Rukiko narwo rwaciye urubanza rwemeza ko urubanza uregwa yajuririye rudahindutse.

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire asaba kugabanyirizwa igihano kugeza ku myaka 5 kubera kwemera icyaha no kuba yaramaze kugororoka bihagije kandi ko hari imfubyi arera.

Ubushinjacyaha bwo bwaburanye buvuga ko uregwa yagabanyirijwe igihano ku buryo buhagije kuko yahanishijwe igifungo cy'imyaka 25 mu mwanya w'igifungo cya burundu, bityo ko hagomba gukurikizwa igitekerezo kiboneka mu rubanza RPA 0066/08/CS rwaciwe n'Urukiko rw'Ikirenga aho muri urwo rubanza Urukiko rw'Ikirenga rwasanze ko nubwo uregwa yemera icyaha atakongera kugabanyirizwa mu gihe yagabanyirijwe bihagije ku rwego rwa mbere.

Incamake y'icyemezo: 1. Umucamanza agomba guhuza igihano n'uburemere bw'icyaha, imikorere yacyo n'ingaruka zacyo kabone n'iyo iki gihano cyajya munsi y'igihano gito cyategetswe n'itegeko, bityo hakurikijwe imikorere y'icyaha cyakozwe no kuba uregwa yemera icyaha kuburyo budashidikanywaho uregwa ahanishijwe igihano cy'igifungo cy'imyaka 15 n'ihazabu y'amafaranga miliyoni icumi (10.000.000Frw).

2. Mu kugena igihano, ingano ntoya y'urumogi uregwa (66 boules) yafatanywe ikwiye kwitabwaho kuko ingaruka zigera ku bantu bakeya ugereranyije n'abacuruza urumogi rwinshi.

Urubanza rwajuririwe ruhindutse ku birebana n'igihano.

Amategeko yashingiweho:

Itegeko n° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 11.

Itegeko Nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49.

Imanza zifashishijwe:

Ubushinjacyaha v. Nzafashwanimana, RPAA 000032/2019/CA rwaciwe n'Urukiko rw' Ubujurire kuwa 28/02/2020, igika cya 16 n'icya 17.

Ubushinjacyaha v. Rusesabagina, RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022, igika cya 252.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha bukurikiranyeho Mubaraka Eduine icyaha cyo gucuruza ibiyobyabwenge, buvuga ko yafatanywe udupfunyika 67(67boules) tw'urumogi ko kandi yemeye ko arucuruza kandi ko amaze ibyumweru 2 arucuruza. Mubaraka Eduine yaburanye yemera icyaha akurikiranweho, asaba imbabazi.

[2] Mu rubanza RP 00658/2019/TGI/GSBO rwaciwe kuwa 31/05/2019, Urukiko rwaregewe rwemeje ko Mubaraka Eduine ahamwa n'icyaha cyo gucuruza ibiyobyabwenge bihambaye, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25ans) n'ihazabu ya 20.000.000Frw.

[3] Mubaraka Eduine yajuriye Urukiko Rukuru asaba kugabanyirizwa ibihano biruseho kuko ari ubwa mbere akoze icyaha, ko ari impfubyi yirera inarera barumuna be, ibyo byose ngo umucamanza akaba yarabyirengagije amuhanisha igihano kiremereye.

[4] Mu rubanza RPA 001151/2019/HC/KIG rwaciwe kuwa 13/07/2020, urukiko rwemeje ko ubujurire bwa Mubaraka Eduine nta shingiro bufite, rwemeza ko urubanza yajuririye rudahindutse.

[5] Mu gufata icyemezo, Urukiko rwasanze Mubaraka Eduine atakongera kugabanyirizwa ibihano kuko yagabanyirijwe igihano mu buryo buhagije hakurikijwe ibiteganywa n'ingingo ya 60 y'itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[6] Mubaraka Eduine, yajuririye Urukiko rw'Ubujurire asaba kugabanyirizwa igihano kugeza ku myaka 5 kubera kwemera icyaha no kuba yaramaze kugororoka bihagije kandi ko hari imfubyi arera.

[7] Ubushinjacyaha bwasubije buvuga ko Mubaraka Eduine yagabanyirijwe bihagije kuko yagombaga guhanishwa igifungo cya burundu ariko ahanishwa imyaka 25 hashingiwe ku kwemera icyaha kwe.

[8] Iburanisha ryabaye kuwa 05/07/2022 Mubaraka Eduine yunganiwe na Me Ndayisabye Alex naho Ubushinjacyaha buhagarariwe na Rudatinya N. Gaspard, Urukiko rukaba rusuzuma niba Mubaraka yagabanyirizwa igihano yahanishijwe.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

- **Kumenya niba Mubaraka Eduine yakwongera kugabanyirizwa ibihano kubera kwemera icyaha**

[9] Mubaraka Eduine yajuriye avuga ko yemeye kuva agifatwa ariko inkiko zibirengaho zimuhanisha igihano kiremereye cy'imyaka 25 n'ihazabu y'amafranga 20.000.000frw, asaba Urukiko rw'ubujurire guca inkoni izamba rukamugabanyiriza ibihano kugeza ku gifungo cy'imyaka 5 kuko akomeje kwemera icyaha akagisabira imbabazi, ko ari imfubyi irera izindi, ko ari ubwa mbere yari aguye mu cyaha kandi ko yarangije kugororoka kuko yamenve ububi bw'icyaha. Yasabye ko hashingirwa ku rubanza RP OO355/2020/TGI/Gsbo rwaciwe kuwa 23/6/2021 aho uwaregwaga icyaha cyo gucuruza ibiyobyabwenge yahanishijwe igifungo cy'imyaka 6.

[10] Me Alex Ndayisabye umwunganira avuga ko Mubaraka Eduine akwiye kongera kugabanyirizwa ibihano ndetse n'ihazabu yaciwe ikavanwaho kuko yahanwe hashingiwe ku itegeko ritari ryo ndetse anahabwa ibihano binyuranye n'ubutabera buboneye kuko igihano gito giteganywa n'itegeko yagombaga guhanishwa atari igiteganywa n'ingingo ya 59 na 60 z'Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ahubwo ko yagombaga guhanwa hakurikijwe ibiteganywa mu ngingo ya 35 y'Itegeko n°30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza nshinjabyaha kuko yafatiwe mu cyuho, bityo agahanishwa igihano cy'imyaka 20 ariko ntacibwe ihazabu kuko idateganyijwe muri iyi ngingo. Yavuze ko iki gihano nacyo cyagabanywa hashingiwe ku rubanza RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019, no ku rubanza RPAA 00031/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/10/2021, bityo agahanishwa igifungo cy'imyaka itanu (5).

[11] Ubushinjacyaha bwisobanuye buvuga ko Mubaraka yagabanyirijwe igihano ku buryo buhagije kuko yahanishijwe igifungo cy'imyaka 25 mu mwanya w'igifungo cya burundu, bityo ko hagomba gukurikizwa igitekerezo kiboneka mu rubanza RPA 0066/08/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 6/2/2009 haburana ubushinjacyaha na Kabahizi Jean aho Urukiko rw'Ikirenga rwasuzumye ubusabe bwe, rusanga nubwo yemera icyaha atakwongera kugabnyirizwa kuko yagabanyirijwe bihagije ku rwego rwa mbere. Ubushinjacyaha bwavuze kandi ko kuba ari imfubyi irera izindi bitaba impamvu ituma agabanyirizwa igihano kuko yakoze icyaha azi izo mpamvu zose.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 11 y'Itegeko n° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, yahinduye ingingo ya 263 iteganya ko « (...) Umuntu wese ukora, uhinga, uhindura, utunda, ubika, uha undi, ugurisha mu gihugu ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo mu buryo bunyuranyije n'amategeko, aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa : 1 º igifungo cya burundu

n'ihazabu y'amafaranga y'u Rwanda atari munsi ya miliyoni makumyabiri (20.000.000 Frw) ariko atarenze miliyoni mirongo itatu (30.000.000 Frw), ku byerekeye ibiyobyabwenge bihambaye. (…).

[13] Ingingo ya 49 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko "Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo''.

[14] Dosiye igaragaza ko uwitwa Hakizimana Bertin yafatanywe agapfunyika 1 k'urumogi, bamubajije aho yagakuye avuga ko ari Mubaraka wakamugurishije, bamutegeka kumuhamagara amusaba kumuzanira udupfunyika 50 tw'urumogi, bituma afatanwa udupfunyika 66. Mubaraka nawe ubwe abazwa mu Bushinjacyaha yasobanuye ko yari amaze ibyumweru bibiri acuruza urumogi, ngo akaba arucururiza Jean paul, ko agapfunyika 1 akagurisha amafranga 200Frw.

[15] Urukiko rurasanga impamvu y'ubujurire bwa Mubaraka Eduine muri uru Rukiko igamije gusaba urukiko rw'ubujurire guca inkoni izamba rukwongera kumugabanyiriza ibihano hashingiwe ku kuba yemera icyaha, kuba ari imfubyi irera izindi, kuba aribwo bwa mbere aguye mu cyaha no kuba nta ngaruka zatewe n'icyaha

[16] Urukiko rurasanga ingingo Me Alex Ndayisabye aburanisha ko Mubaraka yahanwa hakurikijwe ingingo ya 35 y'Itegeko N° 30/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ryariho icyaha gikorwa, nta shingiro ifite kuko iri atariryo Tegeko rigena ibyaha n'ibihano, ko nta kosa ryakozwe n'Urukiko rwamuhanishije Itegeko n° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano kuko aririyo riteganya icyaha cyo gucuruza ibiyobyabwenge ndetse rigateganya ibihano byacyo; ushinjwa akaba adashobora guhanwa hakurikijwe itegeko rigenga imiburanishirize kabone n'iyo yaba yafatiwe mu cyaha.

[17] Urukiko rurasanga nubwo, Mubaraka yagabanyirijwe igihano agahanishwa igifungo cy'imyaka 25 mu mwanya w'igifungo cya burundu hakurikijwe ingingo ya 60 y'Itegeko n° 68/2018 ryo kuwa 30/08/2018, ibi bitagize inzitizi ibuza umucamanza kwongera kugabanya ibihano mu gihe asanga aribwo butabera buboneye bukwiranye n'uburemere bw'icyaha cyakozwe. Urukiko rw'Ubujurire rwabitanzeho umurongo mu rubanza RPAA 00032/2019/CA[1] rwaciwe kuwa 28/02/2020, uru Rukiko narwo rushingiye ku rubanza RS/INCONST/SPEC 00003/2019/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 04/12/2019, rukaba rwarasobanuye ko umucamanza agomba guhuza igihano n'uburemere bw'icyaha, imikorere yacyo n'ingaruka zacyo kabone n'iyo iki gihano cyajya munsi y'igihano gito cyategetswe n'itegeko, kutabikora bikaba byaba binyuranyije n'amahame y'ubutabera avugwa mu ngingo ya 49 y'Itegeko n° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[18] Nk'uko uru Rukiko rwabisesenguye mu rubanza RPA 00060/2021/CA, ingingo za 49 n'iya 58 z'Itegeko n˚ 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru zumvikanisha ko Umucamanza mu bushishozi bwe asuzuma impamvu nyoroshyacyaha (circonstances atténuantes judiciaires ou causes judiciaires d'atténuation), akazisobanura, akemeza ko koko zoroshya uburemere bw'icyaha kandi ko zikwiye gushingirwaho. Iyo amaze kwemeza ko zashingirwaho atanga igihano kijyanye

[1] Reba igika cya 16 n'icya 17 by'urubanza RPAA 000032/2019/CA rwaciwe n'Urukiko rw'Ubujurire kuwa 28/02/2020 haburana Ubushinjacyaha na Nzafashwanimana Jean de Dieu.

n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Ubwo burenganzira bufitwe na buri mucamanza usuzuma urubanza yashyikirijwe harimo n'Umucamanza uburanisha urubanza rujuririrwa[2].

[19] Urukiko rurasanga, nubwo urumogi ruri mu biyobyabwenge bihambaye kandi ubicuruza akaba ahanishwa igifungo cya burundu, nyamara kandi birakwiye ko umucamanza ashyira mu gaciro uburemere bw'icyaha n'igihano gitanzwe. Rurasanga, hamwe nuko Mubaraka yaburanye yemera icyaha kuva yafatwa, ingano ntoya y'urumogi (66 boules) yafatanywe nayo ikwiye kwitabwaho kuko ingaruka zigera ku bantu bakeya ugereranyije n'abacuruza urumogi rwinshi.

[20] Urukiko rurasanga, hakurikijwe imikorere y'icyaha cyakozwe na Mubaraka wafatanwe "66 boules" z'urumogi yacuruzaga, hakurikijwe no kuba yemera kuburyo budashidikanywaho icyaha yakoze, uru Rukiko rurasanga igifungo cy'imyaka 15 n'ihazabu ya 10.000.000 Frw ari igihano gikwiranye n'icyaha Mubaraka yakoze ndetse kikaba ari n'igihe gihagije cyatuma atekereza ku bubi bw'icyaha cyo gukwirakwiza ibiyobyabwenge. Ibi kandi Urukiko rurabishingira ku ngingo ya 49 y'Itegeko N° 68/2018 ryavuzwe haruguru.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko urubanza RPA 001151/2019/HC/KIG, rwaciwe n'Urukiko Rukuru, kuwa 13/07/2020 ruhindutse ku birebana n'igihano gusa.

[22] Rwemeje ko Mubaraka Eduine ahanishwa igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga miliyoni icumi (10.000.000Frw).

[23] Rutegetse ko Mubaraka Eduine asonerwa amagarama y'Urukiko kuko yaburanye afunzwe.

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[2]Reba igika cya 252 cy'urubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa04/04/2022 haburana Ubushinjacyaha na Rusesabagina Paul na bagenzi be, urupapuro rwa 88.