NIYONKURU v UWIHOREYE

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00030/2019/CA – (Kaliwabo, P.J.) 12 Kamena 2020]

Amategeko agenga ububasha bw'inkiko – Ububasha bw'inkiko – Inzitizi y'iburabubasha – Umuburanyi ntiyakwiyambaza ingingo irebana no kuba Urukiko rwarashingiye ku itegeko ritariho kugirango ikirego cyakirwe mu bujurire, mu gihe abishingira ku ngingo itarasuzumwe ngo ifatweho icyemezo mu rubanza ajuririra.

Incamake y'ikibazo: Umuhesha w'inkiko w'umwuga yarangije urubanza rwaciwe n'Urukiko rw'Ikirenga hagati y'Uwihoreye, Barinda n'Akarere ka Rubavu akora inyandikomvugo ihesha Uwihoreye umwe mu mitungo yemejwe muri urwo rubanza rurangizwa. Undi Muhesha w'inkiko witwa Niyonkuru abisabwe na Barinda, yakoze indi nyandiko yise inyandiko-mvugo yemeza kandi igaragaza uko ibintu bimeze, yasubiye ku irangiza rubanza ryakozwe n'Umuhesha w'inkiko wa mbere ndetse haterwa na "*bornes*" bivugwa ko zerekana aho ubutaka Uwihoreye yatsindiye bugarukira. Ibi byatumye Uwihoreye atanga ikirego mu Rukiko Rwisumbuye rwa Rubavu asaba ko iyo nyandikomvugo iteshwa agaciro kuko yakozwe mu buryo bufifitse ariko rwemeza ko ikirego cye nta shingiro gifite.

Uwihoreye yajuririye Urukiko Rukuru, Urugereko rwa Musanze avuga ko hirengagijwe ko urubanza rwaciwe n'Urukiko rw'Ikirenga rwarangijwe mu buryo budakurikije amategeko, kuko Umuhesha w'Inkiko Niyonkuru yitereye "*Bornes*" atabifitiye ububasha. Niyonkuru yireguye avuga ko atarangije urubanza, ahubwo ko yemeje uko ibintu bimeze.

Urukiko Rukuru rwemeje ko mu byukuri ari irangiza rubanza kandi rigomba guteshwa agaciro kuko ibikubiye muri iyo nyandiko mvugo birenze kureba no kwemeza uko ibintu bimeze. Niyonkuru yajuririye Urukiko rw'Ubujurire avuga ko Urukiko rwahamije ko we nk'Umuhesha w'Inkiko ari we wateye "*bornes*" nyamara zaratewe n' abakozi b'Akarere akaba yaritabaje impuguke nk'uko byari byarasabwe n'itsinda ry'abakozi ryoherejwe n'Intara y'Iburengerazuba.

Mbere yo kwiregura ku mpamvu z'ubujurire, Uwihoreye yabyukije inzitizi yo kutakira ikirego kuko kitujuje ibeteganywa n'amategeko kuko urubanza rujuririrwa rutagenwemo indishyi zingana nibura na 75.000.000Frw, ko kandi Niyonkuru yakoresheje igenagaciro ry'ikibanza cyaburanwe mu rubanza atabayemo umuburanyi bityo ko iryo genagaciro ritashingirwaho mu kugena ububasha bw'uru Rukiko.

Niyonkuru avuga ko iyakirwa ry'ikirego cye rigomba gushingira ku kuba Urukiko rwaraciye urubanza rushingiye ku itegeko ritariho. Uwihoreye asubiza avuga ko iyi ngingo itigeze iburanishwa mu nkiko zibanza bityo ko itasuzumwa bwa mbere mu Rukiko rw'Ubujurire.

Incamake y'icyemezo: Umuburanyi ntiyakwiyambaza ingingo irebana no kuba Urukiko rwarashingiye ku itegeko ritariho kugirango ikirego cyakirwe mu bujurire, mu gihe abishingira ku ngingo itarasuzumwe ngo ifatweho icyemezo mu rubanza ajuririra. Bityo, ubujurire bwa Niyonkuru Jean Aimé ntiburi mu bubasha bw'Urukiko rw'Ubujurire kuko nta ngingo ijyanye n'iyakirwa ry'ubujurire bw'urubanza RC 00120/2018/TGI/RBV yigeze igibwaho impaka mu Rukiko Rukuru, nta n'icyemezo kirebana n'iyi ngingo kigeze kiyifatwaho.

Ubujurire ntiburi mu bubasha bw'Urukiko rw'Ubujurire.
Amagarama aherera ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52.
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 21, 111, 128 n'iya 158.
Itegeko Nº 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'abahesha b'inkiko, ingingo ya 49.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 17/02/2015, Umuhesha w'Inkiko witwa Muhire Michel yarangije urubanza RCAA 0052/12/CS rwaciwe ku wa 17/01/2014 n'Urukiko rw'Ikirenga, rwaburanwe hagati ya Uwihoreye Jean Pierre na Barinda Oscar ndetse n'Akarere ka Rubavu. Uyu muhesha w'Inkiko akaba yarakoze inyandiko-mvugo ivuga ko ahesheje Uwihoreye Jean Pierre ubutaka bufite ubuso bungana na 24 Ares, bufite "*Titre de propriété*" y'ikibanza nimero 1, bwabaruwe nimero 283, buherereye mu Mudugudu wa Nyaburanga, Akagari ka Nengo, ubwo butaka bukaba bwarasobanuwe mu gika cya 12 cy'urubanza rwarangijwe.

[2] Ku wa 24/10/2018, Umuhesha w'Inkiko witwa Niyonkuru Jean Aimé, abisabwe na Barinda Oscar, yakoze indi nyandiko yise Inyandiko-mvugo yemeza kandi igaragaza uko ibintu bimeze, inyandiko asubiye ku irangiza rubanza ryakozwe na Muhire ndetse haterwa na "bornes" bivugwa ko zerekana aho ubutaka Uwihoreye yatsindiye bugarukira.

[3] Nyuma y'uko Niyonkuru Jean Aimé akoze inyandiko-mvugo imaze kuvugwa haruguru, Uwihoreye Jean Pierre yaregeye Urukiko Rwisumbuye rwa Rubavu, asaba ko irangiza rubanza Niyonkuru Jean Aimé yakoze ryateshwa agaciro kuko ryakozwe mu buryo bufifitse.

[4] Ku wa 30/04/2019, Urukiko rwemeje ko ikirego cya Uwihoreye Jean Pierre nta shingiro gifite, ruvuga ko urubanza RCAA 0052/12/CS rwarangijwe nk'uko rwaciwe, rushingiye ku kuba Niyonkuru Jean Aimé, mu kugaragaza uburyo ishyirwa mu bikorwa ry'irangiza ry'urubanza RCAA 0052/12/CS rimeze, yifashishije abakozi bashinzwe ubutaka mu Karere ka Rubavu. Rwategetse Uwihoreye Jean Pierre guha Niyonkuru Jean Aimé 500.000 Frw yis'igihembo cya Avoka, na 100.000 Frw y'indishyi z'akababaro n'ikurikirana rubanza.

[5] Uwihoreye Jean Pierre yajuririye Urukiko Rukuru, Urugereko rwa Musanze avuga ko hirengagijwe ko urubanza RCAA 0052/12/CS rwarangijwe mu buryo budakurikije amategeko, kuko Umuhesha w'Inkiko NIYONKURU Jean Aimé yitereye "*Bornes*" atabifitiye ububasha ndetse ngo agatera imbago 3 mu mwanya wa 4, ko kandi yirengagije ko hari ikirego RS/INTERT/RC 00001/2019/SC cyaregewe Urukiko rw'Ikirenga gisobanuza urubanza rurangizwa kubw'ibibazo byaruvutsemo.

[6] Niyonkuru Jean Aimé yireguye mu bujurire avuga ko atarangije urubanza, ahubwo ko yemeje uko ibintu bimeze (certifier) nk'uko biteganywa mu ngingo ya 49, 70, y'Itegeko Nº 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'abahesha b'inkiko kandi ko yifashishije abakozi b'Akarere bagaragaje aho ubutaka bwa Uwihoreye bugarukira bakanashinga imbago.

[7] Ku wa 30/07/2019, Urukiko Rukuru, Urugereko rwa Musanze, rwaciye rubanza RCA00055/2019/HC/MUS, rusanga inyandiko yakozwe na Niyonkuru Jean Aimé yo ku wa 24/10/2018, yiswe Inyandiko-mvugo yemeza kandi igaragaza uko ibintu bimeze mu byukuri ari irangiza rubanza kandi rigomba guteshwa agaciro kuko ibikubiye muri iyo nyandiko mvugo birenze kureba no kwemeza uko ibintu bimeze, biteganywa mu ngingo ya 49, agace ka 70 y'Itegeko y'Itegeko Nº 12/2013 ryavuzwe haruguru. Rwashingiye kandi ku mvugo ya Niyonkuru Jean Aimé wivugiye mu Rukiko rubanza yuko ubutaka yapimye bwa Uwihoreye Jean Pierre buntanganaga na 24 ares zivugwa mu gika 12 cy'urubanza RCAA 0052/12/CS no kuba iryo rangiza rubanza ryarirengagije ibibazo byari byaragarajwe n'Ubuyobozi bw'Intara y'Iburengerazuba mu guhesha Uwihoreye Jean Pierre ubutaka bwe, rikirengagiza yuko ibyo bibazo byari kubanza gukemurirwa mu rubanza RS/INTERT/RC 00001/2019/SC.

[8] Niyonkuru Jean Aimé wunganiwe na Me Tugirimana Vincent yajuririye Urukiko rw'Ubujurire, mu mwanzuro we avuga ko Urukiko Rukuru Urugereko rwa Musanze rwahamije ko we nk'Umuhesha w'Inkiko ari we wateye "*bornes*" nyamara zaratewe n' abakozi b'Akarere, ko ibyo Urukiko Rukuru rwemeje mu gika cya 11 bihabanye n'ibyo Urukiko rw'Ikirenga rwategetse, ko kandi Urukiko Rukuru rwirengagije ko hitabajwe impuguke nk'uko byari byarasabwe n'itsinda ry'abakozi ryoherejwe n'Intara y'Iburengerazuba. Yajurijwe kandi no kuba mu gutesha agaciro imirimo yakoze, Urukiko rwagombaga no gukuraho n'irangiza rubanza ryakozwe na Muhire Michel nyamara ntirubikore. Ku bijyanye n'urubanza RS/INTERT/RC00001/2019/SC, Niyonkuru yavuze ko Urukiko rutagombye kurushingiraho kuko rutigeze rugaragazwa.

[9] Mu mwanzuro we no mu iburanisha ryo kuwa 3/06/2020, Uwihoreye Jean Pierre uburanirwa na Me Ngarambe Raphael, mbere yo kwiregura ku mpamvu z'ubujurire, yabyukije inzitizi yo kutakira ikirego kuko kitujuje ibisabwa mu ngingo ya 52 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, kuko urubanza ajuririra rutagenwemo indishyi zingana nibura na 75.000.000Frw, ko kandi Niyonkuru Jean Aimé yakoresheje igenagaciro ry'ikibanza cyaburanwe mu rubanza atabayemo umuburanyi bityo ko iryo genagaciro ritashingirwahoho mu kugena ububasha bw'uru Rukiko.

[10] Mu iburanisha ryo ku wa 03/06/2020, Niyonkuru Jean Aimé wunganiwe na Me Tugirimana yavuze ko iyakirwa ry'iki kirego rigomba gushingira ku ngingo ya 52 al2 mu gace ka gatatu kuko Urukiko rwaciye urubanza rushingiye ku itegeko ritariho aho rwakiriye ubujurire bw'urubanza rushingiye ku mpaka zivutse mu irangizwa ry'imanza kandi bibujijwe mu ngingo ya 21 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Asubiza kuri iyi ngingo yabyukijwe mu iburanisha nyamara itari mu mwanzuro, Me Ngarambe Raphael uburanira Uwihoreye Jean Pierre yavuze ko iyi ngingo itigeze iburanishwa mu nkiko zibanza bityo ko itasuzumwa bwa mbere mu Rukiko rw'Ubujurire.

[11] Muri uru rubanza harasuzumwa ikibazo kirebana n'ububasha bw'Urukiko mukwakira ubujurire bwatanzwe na Niyonkuru Jean Aimé.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Ku birebana n'agaciro k'ikiburanwa

[12] Me Ngarambe Raphael uburanira Uwihoreye Jean Pierre yabyukije inzitizi yo kutakira ubujurire bwa Niyonkuru Jean Aimé kuko butari mu bubasha bwUrukiko rw'Ubujurire hakurikijwe ibisabwa mu ngingo ya 52 y'tegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. Avuga ko Uwihoreye Jean Pierre yakoresheje igenagaciro ry'umutungo urangirizwaho urubanza ashaka kwerekana ko urenze 75.000.000Frw nyamara ngo ikiburanwa muri uru rubanza ari icyemezo cya Niyonkuru Jean Aimé cyo kurangiza urubanza RCAA 0052/12/CS ku buryo bufifitse aho kuba umutungo ubwawo.

[13] Niyonkuru Jean Aimé yunganiwe na Me Tugirimana avuga ko igenagaciro yarikoze abisabwe n'ubwanditsi bw'Urukiko kandi ko yagombye no kugaragaza agaciro k'ibyakwangirizwa n'igikorwa aregwa cyo kurangiza urubanza.

UKO URUKIKO RUBIBONA

[14] Urukiko rurasanga Niyonkuru Jean Aimé yarashingiye ku genagaciro (*expertise*) ry'umutungo waburanwaga mu rubanza RCAA 0052/12/CS rwaciwe ku wa 17/01/2014 n'Urukiko rw'Ikirenga atabayemo umuburanyi mu kwemeza ko ubu bujurire buri mu bubasha bw'uru Rukiko kandi icyaburanwaga mu manza RC 00120/2018/TGI/RBV na RCA 00055/2019/HC/MUS cyari ugutesha agaciro irangiza ry'urubanza RCAA 0052/12/CS ryakozwe ku wa 24/10/2018 na Niyonkuru Jean Aimé mu buryo bufifitse, izo nkiko zombi zikagena indishyi zitageze ku mafaranga 75.000.000 zisabwa mu ngingo ya 52 igika cya 2, agace ka 8 y'Itegeko Nº 30/2018 ryavuzwe haruguru.

[15] Urukiko rurasanga, uretse no kuba igenagaciro ritagaragaza koko ko ryakorewe ku gice cy'umutungo waburanwe hagati ya Uwihoreye Jean Pierre na Barinda Oscar, ikibazo cyasuzumwe kuva mu Rukiko Rwisumbuye rwa Rubavu no mu Rukiko Rukuru, ntaho gihuriye n'agaciro k'ubutaka bwaciriweho urubanza RCAA 0052/12/CS, ahubwo impaka zikaba zishingiye ku nyandiko mvugo yo ku wa 24/10/2018 Niyonkuru Jean Aimé yise ko yemeza kandi igaragaza uko ibintu bimeze, iyi ikaba idakwiye gusuzumirwa mu gaciro katanzwe n'igenagaciro ryakorewe ku mutungo ubaruwe kuri UPI: 3/03/04/05/6654.

[16] Urukiko rurasanga ingingo y'agaciro k'umutungo idashobora kuba impamvu ituma ikirego cya Niyonkuru Jean Aimé cyakirwa nk'uko ubwe abiburanisha.

2. Kuba Urukiko Rukuru rwarashingiye ku itegeko ritariho

[17] Mu iburanisha ryo ku wa 03/06/2020 Niyonkuru Jean Aimé yunganiwe na Me Tugirimana yavuze ko Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha ubu bujurire rushingiye ku gace ka 3 k'igika cya 2 cy'ingingo ya 52 y'Itegeko Nº 30/2018 ryerekeye ububasha bw'inkiko kubera ko Urukiko Rukuru rwaburanishije ubujurire bw'urubanza rwaciwe ku mpaka zivutse mu irangizwa ry'urubanza nyamara bibujijwe mu gace ka 7 k'ingingo ya 21 y'Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi bityo asaba Urukiko gutesha agaciro ibyemezo byafashwe n'Urukiko Rukuru, Urugereko rwa Musanze hashingiwe ku ngingo ya 129 n'iya 158 z'Itegeko Nº 22/2018 rivuzwe haruguru.

[18] Niyonkuru Jean Aimé avuga kandi ko, nubwo iyi ngingo itaburanishijwe ku rwego rw'Urukiko Rukuru ko ariko kuba ari ingingo y'indemyagihugu, Urukiko rwagombaga kubyibwiriza, ko kuba rwarabirenzeho rukaburanisha ubujurire budateganywa n'amategeko bigomba gukosorwa n'Urukiko rw'Ubujurire.

[19] Me Ngarambe Raphael uburanira Uwihoreye Jean Pierre avuga ko ingingo yo kuba Urukiko rwaburanishije ubujurire budateganywa n'Itegeko itigeze iburanwa mu Rukiko Rukuru bityo ko idashobora gushingirwaho mu bujurire bwa kabiri.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 52, igika cya kabiri mu gace ka 3 ivuga ko Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha mu rwego rw'ubujurire bwa kabiri imanza zaciwe n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare, iyo izo manza zashingiye ku itegeko ritariho, ingingo z'amategeko zitakiriho cyangwa zaciwe n'urukiko rutabifitiye ububasha.

[21] Urukiko rurasanga gushingira ku itegeko ritariho bivugwa muri iyi ngingo bijyana n'icyemezo Urukiko rwafashe rugendeye ku Itegeko ritariho ryaba iryavuyeho cyangwa ritigeze ribaho, byumvikana ko mbere ya byose hagombye kuba hari icyemezo cyafashwe.

[22] Urukiko rurasanga, nk'uko na Niyonkuru Jean Aimé abyemera, nta ngingo ijyanye n'iyakirwa ry'ubujurire bw'urubanza RC 00120/2018/TGI/RBV yigeze igibwaho impaka mu Rukiko Rukuru bityo ko nta n'icyemezo kirebana n'iyi ngingo kigeze kiyifatwaho. Urukiko rurasanga ntaho rwahera runenga ko Urukiko Rukuru rwashingiye ku itegeko ritariho ku ngingo itaraburanwe muri urwo Rukiko. Kuba ababuranyi baraburanye imizi y'urubanza batibutse kubyutsa inzitizi yo kutakira cy'ubujurire no kuba Urukiko rutarabyibwirije ntibyakosorwa no kwitirira ko Urukiko rwashingiye ku itegeko ritariho kugira ngo ikirego cyakirwe mu Rukiko rw'Ubujurire.

[23] Urukiko rurasanga ikirego RCAA 00030/2019/CA kidashobora kwakirwa mu rwego rw'ubujurire bwa kabiri kuko nta ngingo n'imwe Niyonkuru Jean Aimé agaragaza iha uru Rukiko ubwo bubasha hashingiwe ku biteganywa n'ingingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha.

3. Indishyi zisabwa mu rubanza

[24] Me Ngarambe Raphael uburanira Uwihoreye Jean Pierre yasabye ko, n'ubwo ikirego kitakwakirwa, uwo aburanira yagenerwa amafaranga 1000.000 frw akubiyemo igihembo cya Avoka n'indishyi z'ikurikirana rubanza.

[25] Niyonkuru Jean Aimé yavuze ko izo ndishyi Uwihoreye Jean Pierre atazikwiye kuko atari kurenga ku ihame ry'uko ntawakwitwaza ko atazi amategeko ngo ajuririre ikirego kitajuririrwa.

UKO URUKIKO RUBIBONA

[26] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza 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 kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

[27] Ingingo ya 34 y'Amabwiriza N° 01/2014 yo ku wa 18/07/2014 agena ibihembo mbonera by'Abavoka iteganya ko Avoka afite uburenganzira bwo kugena igihembo ashyize mu gaciro ariko kitari munsi ya 500.000 Frw kandi kitarenze 3.000.000 Frw. Naho ingingo ya 33 y'aya mabwiriza ikavuga ko mu bujurire Avoka w'urega n'uw'uregwa bafite uburenganzira kuri kimwe cya kabiri cy'igihembo cyumvikanyweho ku rwego rwa mbere.

[28] Urukiko rurasanga, Niyonkuru Jean Aimé wajuriye urubanza rutubihirije amategeko agenga ububasha bw'uru Rukiko yarateje igihombo Uwihoreye Jean Pierre wasyizeho Avoka umuburani bityo akaba agomba kuryozwa iki gihombo. Rurasanga, hakurikijwe imirimo yakozwe kuri uru rwego mu rubanza rurangijwe n'inzitizi yo kutakira ubujurire, Uwihoreye Jean Pierre agomba guhabwa amafaranga 500.000 y'igihembo cya avoka waburanye urubanza.

III. ICYEMEZO CY'URUKIKO

[29] Rwemeje ko ubujurire bw'urubanza RCA 00055/2019/HC/MUS bwatanzwe na Niyonkuru Jean Aimé butari mu bubasha bw'uru Rukiko.

[30] Rutegetse Niyonkuru Jean Aimé guha Uwihoreye Jean Pierre amafaranga ibihumbi magana atanu y'igihembo cya Avoka wamuburaniye kuri uru rwego.

[31] Rutegetse ko 50.000Frw yatanzweho ingwate y'amagarama ahera mu Isanduku ya Leta kuko ahwanye n'ibyakozwe kuri uru rubanza.