SEKAMANA v KUBWIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC 00007/2019/CA– (Mukandamage, P.J., Ngagi, Munyangeri, J.) 17 Mutarama 2020]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Cyamunara – Urubanza rw'ikirego gisaba gukuraho cyamunara yakozwe mu buryo budakurikije amategeko – Urubanza rw'ikirego gisaba gukuraho cyamunara yakozwe mu buryo budakurikije amategeko rwemerewe kujuririrwa kuko atari urubanza rw'impaka zivutse ku irangiza ry'urubanza.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Ruhango, Sekamana na Twagiramungu baburana ubutane maze Urukiko rwemeza ko batandukanye burundu, rutegeka ko bagabana ku buryo bungana umutungo bahuriyeho.

Umuhesha w'Inkiko w'umwuga Me Kubwimana yagurishije mu cyamunara umurima Twagiramungu yari asangiye na Sekamana ku giciro cya miliyoni imwe n'ibihumbi magana ane na mirongo itanu. Nyuma y'icyo cyamunara, Sekamana yatanze ikirego mu Rukiko rw'Ibanze rwa Ruhango asaba gutesha agaciro cyamunara kuko umutungo wabo wagurishijwe amafaranga ari munsi y'agaciro kawo kagaragazwa na raporo y'igenagaciro, ko n'uburenganzira bwe bwo kwanga igiciro muri icyo cyamunara bwirengagijwe. Urukiko rwaciye urubanza rwemeza ko ikirego cyatanzwe na Sekamana nta shingiro gifite.

Sekamana yajuririye urubanza mu Rukiko Rwisumbuye rwa Muhanga, avuga ko Urukiko rw'Ibanze rutasuzumye ikibazo yarugejejeho cyo kuba uburenganzira bwe bwo kwanga igiciro gito umutungo wabo wagurishijweho butarubahirijwe. Urukiko Rwisumbuye rwafashe icyemezo cyo kutakira ubujurire bwe kuko yabutanze ku rubanza rwerekeye impaka zivutse mu irangiza ry'urubanza kandi bene izo manza zitajuririrwa. Ibi byatumye, yandikira Perezida w'Urukiko Rukuru, Urugereko rwa Nyanza, asaba ko urubanza rwaciwe n'Urukiko Rwisumbuye rwasubirwamo ku mpamvu z'akarengane kuko rwanze kwakira ubujurire bwe rusobanuye ko burebana n'impaka zivutse mu irangiza ry'urubanza, nyamara ntaho buhuriye n'impaka zavutse ku rubanza rurangizwa, kuko burebana n'imihango ya cyamunara itarubahirijwe.

Perezida w'Urukiko Rukuru yasanze urwo rubanza rurimo akarengane, yandikira Perezida w'Urukiko rw'Ikirenga, asaba ko ikirego cya Sekamana cyakwakirwa kigasuzumwa mu mizi y'urubanza maze yemeza ko urwo rubanza rwoherezwa mu Rukiko rw'Ubujurire kugira ngo ari rwo ruzaruburanisha. Iburanisha ry'urubanza ryabaye mu ruhame habanza gusuzumwa niba Urukiko Rwisumbuye rwa Muhanga rwaragombaga kwakira ubujurire bwa Sekamana.

Sekamana avuga ko Urukiko Rwisumbuye rwamurenganyije rwanga kwakira ubujurire bwe ruvuga ko yajuririye urubanza rwerekeranye n'impaka zavutse mu irangiza ry'urubanza, nyamara atarigeze anenga urubanza ubwarwo, ko ahubwo yagize ikibazo cy'uko umuhesha w'inkiko yamwimye uburenganzira ahabwa n'amategeko bwo kwanga igiciro mu gihe abona ari gito.

Kubwimana yisobanura avuga ko yarangije urubanza mu buryo bukurikije amategeko, kuko yakoze imihango yose ya ngombwa ijyanye na cyamunara, agatangaza cyamunara inshuro zigeze kuri enye hashakishwa igiciro kinogeye ababuranyi, ariko bikanga, ko nta kundi byari kugenda, ko ahubwo urubanza rwagombaga kurangizwa byanze bikunze, ko rero byumvikana ko icyemezo gifashwe kuri icyo kirego kitagombaga kujuririrwa, kuko kirebana n'impaka zivutse mu irangiza ry'urubanza.

Incamake y'icyemezo: Urubanza rw'ikirego gisaba gukuraho cyamunara yakozwe mu buryo budakurikije amategeko rwemerewe kujuririrwa kuko atari urubanza rw'impaka zivutse ku irangiza ry'urubanza, bityo Urukiko Rwisumbuye rwa Muhanga rukaba rwaribeshye mu mikirize y'urubanza

rwaciye, ariyo mpamvu hagomba kwemezwa ko rwagombaga kwakira ubujurire bwa Sekamana Brigitte rukabusuzuma.

Ikirego cyo gusubirishamo ku mpamvu z'akarengane gifite ishingiro. Urubanza rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ruvanyweho.

Amategeko yashingiweho:
Itegeko Nº 30/2018 ryo ku wa 02/06/2018, rigena ububasha bw'inkiko, ingingo ya 55.
Itegeko N° 21/2012 ryo ku wa 14/06/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 208 n'iya 302.

Imanza zifashishijwe:
Mukamusoni yaburanaga na Leta y'u Rwanda, RADA 0030/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 10/10/2014.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Ruhango, Sekamana Brigitte na Twagiramungu William baburana ubutane. Mu rubanza RC 0286/015/TB/RHGO, rwaciwe ku wa 21/03/2016, urwo Rukiko rwemeje ko Sekamana Brigitte na Twagiramungu William batandukanye burundu, rutegeka ko bagabana ku buryo bungana umutungo bahuriyeho.

[2] Ku itariki ya 07/07/2017, Umuhesha w'Inkiko w'umwuga Me Kubwimana Gérard yagurishije mu cyamunara umurima Twagiramungu William yari asangiye na Sekamana Brigitte, ku giciro cya miliyoni imwe n'ibihumbi magana ane na mirongo itanu (1.450.000 Frw).

[3] Nyuma y'icyo cyamunara, Sekamana Brigitte yatanze ikirego mu Rukiko rw'Ibanze rwa Ruhango, icyo kirego gihabwa RC 00136/2018/TB/RHA, asaba gutesha agaciro cyamunara, kuko umutungo wabo wagurishijwe amafaranga ari munsi y'agaciro kawo kagaragazwa na raporo y'igenagaciro, ko n'uburenganzira bwe bwo kwanga igiciro muri icyo cyamunara bwirengagijwe, urwo Rukiko rwaciye urubanza ku wa 07/08/2018, rwemeza ko ikirego cyatanzwe na Sekamana Brigitte nta shingiro gifite.

[4] Sekamana Brigitte yajuririye urubanza mu Rukiko Rwisumbuye rwa Muhanga, avuga ko Urukiko rw'Ibanze rwa Ruhango rutasuzumye ikibazo yarugejejeho cyo kuba uburenganzira bwe bwo kwanga igiciro gito umutungo wabo wagurishijweho butarubahirijwe.

[5] Mu rubanza RCA 00043/2018/TGI/MHG, Urukiko Rwisumbuye rwa Muhanga rwafashe icyemezo cyo kutakira ubujurire bwa Sekamana Brigitte, kuko yabutanze ku rubanza rwerekeye impaka zivutse mu irangiza ry'urubanza kandi bene izo manza zitajuririrwa.

[6] Sekamana Brigitte ntabwo yishimiye imikirize y'urwo rubanza, yandikira Perezida w'Urukiko Rukuru, Urugereko rwa Nyanza, asaba ko urubanza RCA 00043/2018/TGI/MHG rwasubirwamo ku mpamvu z'akarengane, kuko Urukiko Rwisumbuye rwa Muhanga rwanze kwakira ubujurire bwe rusobanuye ko burebana n'impaka zivutse mu irangiza ry'urubanza, nyamara ntaho buhuriye n'impaka zavutse ku rubanza rurangizwa, kuko burebana n'imihango ya cyamunara itarubahirijwe.

[7] Perezida w'Urukiko Rukuru, Urugereko rwa Nyanza, yasanze urwo rubanza rurimo akarengane, yandikira Perezida w'Urukiko rw'Ikirenga, asaba ko ikirego cya Sekamana Brigitte cyakwakirwa kigasuzumwa mu mizi y'urubanza. Ku itariki ya 25/06/2019, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rwoherezwa mu Rukiko rw'Ubujurire kugira ngo ari rwo ruzaruburanisha.

[8] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 13/11/2019, Sekamana Brigitte ahagarariwe na Me Musonera Alexis, naho Kubwimana Gérard yunganiwe na Me Nduwayo Jean de Dieu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba Urukiko Rwisumbuye rwa Muhanga rwaragombaga kwakira ubujurire bwa Sekamana Brigitte.

[9] Me Musonera Alexis avuga ko Urukiko Rwisumbuye rwa Muhanga rwanze kwakira ubujurire bwa Sekamana Brigitte ruvuga ko yajuririye urubanza rwerekeranye n'impaka zavutse mu irangiza ry'urubanza, nyamara atarigeze anenga urubanza ubwarwo, ko ahubwo yagize ikibazo cy'uko umuhesha w'inkiko yamwimye uburenganzira ahabwa n'amategeko, aho mu muhango wo kurangiza urubanza hakoreshejwe cyamunara, ubwa mbere Umuhesha w'inkiko yavuze ko icyemezo cy'urukiko kidasobanutse, ajya gusobanuza urubanza, yimura cyamunara, ikibazo kiza kuvuka aho ku wa 07/07/2017 ari wo munsi wa mbere watanzweho igiciro, Sekamana Brigitte akacyanga ashingiye ku ngingo ya 302 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, akanga no kubisinyira.

[10] Me Nduwayo Jean de Dieu, uhagarariye Kubwimana Gérard, avuga ko havutse ikibazo cyo kutemeranywa ku gaciro k'umutungo utezwa cyamunara hagati ya Sekamana Brigitte na Twagiramungu William, ko icyo kibazo ari impaka zivutse mu irangiza ry'urubanza.

[11] Asobanura ko Umuhesha w'Inkiko Kubwimana Gérard yarangije urubanza mu buryo bukurikije amategeko, kuko yakoze imihango yose ya ngombwa ijyanye na cyamunara, agatangaza cyamunara inshuro zigeze kuri enye hashakishwa igiciro kinogeye ababuranyi, ariko bikanga, ko nta kundi byari kugenda, ko ahubwo urubanza rwagombaga kurangizwa byanze bikunze, ko rero byumvikana ko icyemezo gifashwe kuri icyo kirego kitagombaga kujuririrwa, kuko kirebana n'impaka zivutse mu irangiza ry'urubanza.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 208 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe cyamunara yakorwaga iteganya ko impaka zishingiye ku irangiza ry'urubanza ryaba riri gukorwa cyangwa ryararangiye zikemurwa n'urukiko rwaruciye bwa nyuma cyangwa urwemeje ko urubanza rwo mu mahanga rurangirizwa mu Rwanda mu gihe kitarenze iminsi cumi n'itanu (15) guhera igihe urukiko rwakiriye ikirego. Bene izo manza ntizijuririrwa, naho ingingo ya 302 y'iryo Tegeko igateganya ko uberewemo umwenda cyangwa uwurimo iyo yumva ko igiciro gitanzwe kidakwiye, ashobora gusaba ko icyamunara gishyirwa ku wundi munsi, ariko udashobora kurenga ukwezi kuva umunsi icyamunara cya mbere cyatangiriye gutezwa. Umukozi ushinzwe guteza cyamunara agena undi munsi cyamunara yimuriweho. Kuri uwo munsi wemejwe ibyo bintu bigurishwa cyamunara byanze bikunze.

[13] Ingingo ya 55, igika cya kabiri, agace ka 2º, 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 iyo mu icibwa ry'urubanza hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese.

[14] Dosiye y'urubanza igaragaza ko Sekamana Brigitte, yatanze ikirego mu Rukiko rw'Ibanze rwa Ruhango asaba kuvanaho cyamunara yakozwe ku wa 07/07/2017, kuko Umuhesha w'Inkiko yateje cyamunara umutungo wabo ku giciro gito, akamwima uburenganzira bwo kunenga igiciro mu cyamunara, urwo rubanza kandi yarujuririye mu Rukiko Rwisumbuye rwa Muhanga kubera impamvu imwe niyari yatumye aregera Urukiko rw'Ibanze rwa Ruhango, yuko umutungo wabo watejwe cyamunara ku giciro gito.

[15] Urukiko rurasanga, harebwe ko Sekamana Brigitte mu ikirego cye yasabaga ko hakwemezwa ko Umuhesha w'Inkiko yirengagije gusubika cyamunara kubera igiciro gito cyahawe umutungo wabo, bigaragara ko uru rubanza ruterekeranye n'impaka zavutse mu irangiza ry'urubanza, kuko icyo Sekamana Brigitte yaregeye atari uko ababuranyi bombi batumvikanye ku buryo urwo rubanza rugomba kurangizwa, kubera ko nta cyategetswe n'Urukiko rw'Ibanze rwa Ruhango mu rubanza rwarangijwe cyaba cyarateje impaka hagati y'ababuranyi, ahubwo uburyo bwo cyamunara yakozwe nibwo bwabangamiye umwe mu baburanyi abitangira ikirego. Uyu ni nawo murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RADA 0030/12/CS rwaciwe ku wa 10/10/2014, Mukamusoni yaburanaga na Leta y'u Rwanda, aho urwo Rukiko rwasobanuye ko byitwa impaka zavutse mu irangiza ry'urubanza, iyo ababuranyi bombi batumvikana ku buryo urwo rubanza rugomba kurangizwa.

[16] Urukiko rurasanga rero byumvikana ko urubanza rw'ikirego gisaba gukuraho cyamunara yakozwe mu buryo budakurikije amategeko rutakwitiranwa n'urubanza ku mpaka zivutse mu irangiza ry'imanza, bityo Urukiko Rwisumbuye rwa Muhanga rukaba rwaribeshye mu mikirize y'urubanza rwaciye, ariyo mpamvu hagomba kwemezwa ko rwagombaga kwakira ubujurire bwa Sekamana Brigitte rukabusuzuma.

[17] Urukiko rurasanga, hashingiwe ku ngingo ya 55, igika cya kabiri, agace ka 2º, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, mu buryo bwo gukemura akarengane kabaye mu rubanza RCA 00043/2018/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga, urwo rubanza rugomba kuvanwaho, maze urwo Rukiko rukaburanisha ubujurire bwatanzwe na Sekamana Brigitte ku rubanza RC 00136/2018/TB/RHA rwaciwe n'Urukiko rw'Ibanze rwa Ruhango.

2. Ku bijyanye n'ishingiro ry'indishyi zisabwa n'ababuranyi muri uru rubanza

[18] Me Musonera Alexis, uhagarariye Sekamana Brigitte, asaba ko Kubwimana Gérard asubiza Sekamana Brigitte 1.600.000 Frw y'igihembo cya Avoka akubiyemo 600.000 Frw yatanze mu Rukiko rw'Ibanze rwa Ruhango na 600.000 Frw mu Rukiko Rwisumbuye rwa Muhanga, hamwe na 1.000.000 Frw mu Rukiko rw'Ubujurire. Asaba kandi kwishyurwa 3.000.000 Frw y'indishyi z'akababaro no gusiragira ku rubanza.

[19] Me Nduwayo Jean de Dieu avuga ko mu Rukiko rw'Ibanze rwa Ruhango Sekamana Brigitte yari yasabye igihembo cya Avoka cyonyine, ko indishyi asaba muri uru rubanza zidakwiye gusuzumirwa kuri uru rwego, ndetse akaba adakwiye guhabwa igihembo cya Avoka kubera ko ari we washoje urubanza, ahubwo ko Sekamana Brigitte ariwe wamuha 700.000 Frw y'igihembo cya Avoka, na 200.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[20] Urukiko rurasanga indishyi zisabwa muri uru rubanza zidakwiye gusuzumwa, kuko rwoherejwe mu rundi rukiko ruzazisuzumira rimwe.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 00043/2018/TGI/MHG, rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 12/12/2018, rwashyikirijwe na Sekamana Brigitte gifite ishingiro.

[22] Rukijije ko urubanza RCA 00043/2018/TGI/MHG, rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 12/12/2018 ruvanyweho.

[23] Rutegetse ko urubanza rwoherezwa mu Rukiko Rwisumbuye rwa Muhanga kugira ngo ruruburanishe nta yandi magarama atanzwe.