UMUJYI WA KIGALI v MUREKEYISONI

[Rwanda URUKIKO RW'UBUJURIRE – RADAA 00001/2022/CA– (Ngagi, P.J.) 25 Mata 2022]

Amategeko agenga ububasha bw'inkiko – Inzitizi y'iburabubasha – Gutsindwa mu nkiko zombi ku mpamvu zimwe – Ubujurire bwa kabiri ntibwakirwa iyo umuburanyi yaburanye yemera ibyo aregwa cyangwa yaratsinzwe mu nkiko zabanje hashingiwe ku mpamvu zimwe – Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkik, ingingo ya 52, igika cya 3.

Incamake y'ikibazo: Murekeyisoni uhagarariye umuryango wa Cyavu na Muhunde François, avuga ko ubutaka bwabo bungana na 16.844 m^2 bwafashwe n'Akarere ka Nyamirambo, kishyura ingurane y'ubutaka bungana na 12.862,3 m^2, hubakwa amashuri, ubutaka bwasigaye bungana na 3.981,7 m^2 bwubakwaho ivuriro ariko bwo budatangiwe ingurane. Avuga ko yasabye kenshi guhabwa ingurane cyangwa kwishyurwa, bidakozwe aregera Urukiko Rwisumbuye rwa Nyarugenge asaba kurenganurwa.

Umujyi wa Kigali watanze inzitizi yo kutakira ikirego cye uvuga ko nta nyungu n'ubushobozi bwo kurega afite kandi atari wo nyiri umutungo asabira ingurane, ko ahubwo yakagombye kurega Leta y'u Rwanda/MINISANTÉ, kuko ari yo ifite ivuriro (*Centre de Santé*) ryubatswe muri ubwo butaka, akaba ari nayo bwanditsweho.

Urukiko rwemeje ko inzitizi yatanzwe n'Umujyi wa Kigali yo kutakira ikirego cyatanzwe na Murekeyisoni nta shingiro ifite, ko kandi icyo kirego gifite ishingiro kuri bimwe; rutegeka Umujyi wa Kigali kumwishyura ingurane ku kibanza giherereye mu Mudugudu wa Rugarama, Akagari ka Rugarama, Umurenge wa Nyamirambo, Akarere ka Nyarugenge, gifite ubuso bungana na 3.981,7m^2. Ibi byatumye Umujyi wa Kigali ujuririra Urukiko Rukuru uvuga ko atari wo wagombaga kuregwa, ko hari guhamagarwa Minisiteri y'Umutungo Kamere yanditsweho uwo mutungo, uriho ibikorwa bya Minisiteri y'Ubuzima: *Centre de santé,* ko iyo Minisiteri yagombaga kugobokeshwa ihagarariwe na Leta y'u Rwanda, ko kandi Uregwa nta nyungu n'ubushobozi bwo kurega utari nyiri umutungo afite.

Urukiko Rukuru rwemeje ko ikirego cy'ubujurire bw'Umujyi wa Kigali nta shingiro gifite; ko urubanza rwaciwe n'Urukiko Rwisumbuye ruhindutse gusa ku ndishyi, rutegeka Umujyi wa Kigali kwishyura Murekeyisoni amafaranga y'indishyi agenwe kuri urwo rwego abariwe hamwe, yiyongera ku y'ingurane.

Umujyi wa Kigali wajuririye na none uru Rukiko maze rusuzuma ikibazo kijyanye no kumenya niba ubujurire bwawo butari mu bubasha bwarwo kubera ko wemera ibyo uregwa no kuba waratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, ikirego cyatanzwe n'Urega. Aha asobanura ko ubwo bujurire butakwakirwa kuberako ari ubujurire bwa kabiri kandi ukaba wemera ibyo uregwa kuko wemera ko wakoze *expropriation,* kandi ukaba waratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe.

Kuri iki kibazo, Umujyi wa Kigali avuga ko utigeze uburana wemera ibyo uregwa, kuko ntaho wigeze wemera ko ari wo ugomba guha Uregwa ingurane, kuko atari wo utunze ubwo butaka. Uvuga kandi ko utigeze utsindwa mu nkiko zombi hashingiwe ku mpamvu zimwe kubera ko Urukiko Rwisumbuye rwavuze ko ugomba kwishyura ingurane ikwiye rushingiye ku kuba hari undi mutungo w'Uregwa wigeze kwishyura, ku kuba warigeze gusaba ubwumvikane ku buryo nta wundi waregwa ariko Urukiko Rukuru ruvuga ko ari wo ugomba kwishyura kuko Leta itazigera itambamira imikirize y'urubanza.

Incamake y'icyemezo: Ubujurire bwa kabiri ntibwakirwa iyo umuburanyi yaburanye yemera ibyo aregwa cyangwa yaratsinzwe mu nkiko zabanje hashingiwe ku mpamvu zimwe. Bityo, Ubujurire bwa kabiri bwatanzwe n'Umujyi wa Kigali ntibwakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire ku mpamvu y'uko inkiko zombi zabanje zemeje ko Umujyi wa Kigali ugomba guha Murekeyisoni Didacienne ingurane ikwiye zishingiye kuri raporo zigaragaza ko igihande cyasigaye cyakoreshejwe ku nyungu rusange, ko kandi kitigeze kigenerwa ingurane.

Ubujurire ntiburi mu bubasha bw'Urukiko rw'Ubujurire.
Amagarama ahwanye n'ibyakozwe.

Amategeko yashingiweho:

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52.

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko N° 18/2007 ryo ku wa 19/04/2007 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, ingingo ya 26 n'iya 28.

Imanza zifashishijwe:

RRA na SODAR Ltd, RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017.

Bank of Kigali Ltd na Mulisa Kana Martin, RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017.

KOPERATIVE DUKUNDUMURIMO (KOADU) na KING CONSTRUCTION AND SERVICE COMPANY (KICOSECA), RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Murekeyisoni Didacienne, uhagarariye umuryango wa Cyavu Donath na Muhunde François, avuga ko ubutaka bwabo bungana na 16.844 m2 bwafashwe n'Akarere ka Nyamirambo, ku wa 26/10/2011, kishyura ingurane ingana na 15.071.185 Frw ihwanye na 12.862,3 m^2, hubakwa amashuri, ubutaka bwasigaye bungana na 3.981,7 m^2 bwubakwaho ivuriro ariko bwo budatangiwe ingurane. Avuga ko yasabye kenshi guhabwa ingurane cyangwa kwishyurwa, bidakozwe aregera Urukiko asaba kurenganurwa.

[2] Uhagarariye Umujyi wa Kigali yatanze inzitizi yo kutakira ikirego cyatanzwe na Murekeyisoni Didacienne avuga ko nta nyungu n'ubushobozi bwo kurega Umujyi wa Kigali kandi atari wo nyiri umutungo asabira ingurane, ko ahubwo yakagombye kurega Leta y'u Rwanda/Minisanté, kuko ari yo ifite ivuriro (*Centre de Santé*) ryubatswe muri ubwo butaka, akaba ari nayo bwanditsweho.

[3] Mu rubanza RAD 00129/2019/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 11/09/2020, urwo Rukiko rwemeje ko inzitizi yatanzwe n'Umujyi wa Kigali yo kutakira ikirego cyatanzwe na Murekeyisoni Didacienne nta shingiro ifite, ko kandi ikirego cyatanzwe na Murekeyisoni Didacienne gifite ishingiro kuri bimwe; rutegeka Umujyi wa Kigali kwishyura Murekeyisoni Didacienne ingurane ku kibanza giherereye mu Mudugudu wa Rugarama, Akagari ka Rugarama, Umurenge wa Nyamirambo, Akarere ka Nyarugenge, Umujyi wa Kigali gifite ubuso bungana na 3.981,7m2 ihwanye na 99.542.500 Frw, igihembo cya Avoka kingana na 500.000 Frw,

yose hamwe akaba 100.042.500 Frw no kumusubiza 20.000 Frw y'ingwate y'amagarama yatanze arega.

[4] Umujyi wa Kigali ntiwishimiye imikirize y'urubanza, uyijuririra mu Rukiko Rukuru uvuga ko atari wo wagombaga kuregwa, ko hari guhamagarwa Minisiteri y'Umutungo Kamere yanditsweho uwo mutungo, uriho ibikorwa bya Minisiteri y'Ubuzima: "*Centre de santé*". Uvuga kandi ko iyo Minisiteri yagombaga kugobokeshwa ihagarariwe na Leta y'u Rwanda, ko kandi Murekeyisoni Didacienne nta nyungu n'ubushobozi bwo kurega utari nyiri umutungo afite.

[5] Uhagarariye Murekeyisoni Didacienne yireguye avuga ko ubujurire bwatanzwe n'Umujyi wa Kigali nta shingiro bufite, kuko umutungo w'umuryango awurega Umujyi wa Kigali watanze ingurane ku gice kimwe cy'ubutaka cyanditse kuri Minisiteri y'Uburezi, kandi ko Leta y'u Rwanda itagobokeshwa. Yavuze kandi ko amabwiriza ategeka ko ubutaka bwose bwa Leta bwandikwa kuri Minisiteri y'Umutungo Kamere, atabuza Umujyi wa Kigali kwishyura, kuko wakoze *expropriation* wishyura igice kimwe, ukanemera gukemura ikibazo mu bwumvikane.

[6] Ku wa 11/11/2021, Urukiko Rukuru rwaciye urubanza RADA 00092/2020/HC/KIG rwemeza ko ikirego cy'ubujurire cyatanzwe n'Umujyi wa Kigali nta shingiro gifite; ko urubanza RAD 00129/2020/TGI/NYGE rwaciwe ku wa 11/09/2020 n'Urukiko Rwisumbuye rwa Nyarugenge ruhindutse gusa ku ndishyi, rutegeka Umujyi wa Kigali kwishyura Murekeyisoni Didacienne 5.350.000 Frw y'indishyi agenwe kuri urwo rwego abariwe hamwe, yiyongera kuri 99.542.500 Frw y'ingurane, 500.000 Frw y'igihembo cya Avoka na 20.000 Frw y'igarama yagenwe mu rubanza rujuririrwa, ko 40.000 Frw y'ibyakoreshejwe mu rubanza aherera ku isanduku ya Leta.

[7] Umujyi wa Kigali wajuririye na none uru Rukiko, ubujurire bwawo bwandikwa kuri RADAA 00001/2022/CA.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 11/04/2022, Umujyi wa Kigali uhagarariwe na Me SAFARI Vianney, Murekeyisoni Didacienne ahagarariwe na Me Kaboyi Jean Bosco haburanishwa inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire, ishingiye ku kuba Umujyi wa Kigali waremeye ibyo uregwa no kuba waratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

- **Kumenya niba Ubujurire bw'Umujyi wa Kigali butari mu bubasha bw'uru Rukiko kubera ko wemera ibyo Uregwa no kuba waratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe**

[9] Uhagarariye Murekeyisoni Didacienne ashingiye ku ngingo ya 52, igika cya 3, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko ubujurire bwa kabiri budashobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, asaba ko ubujurire bw'Umujyi wa Kigali butakwakirwa, kubera ko ari ubujurire bwa kabiri kandi Umujyi wa Kigali ukaba wemera ibyo uregwa kuko wemera ko wakoze *expropriation*, kandi ukaba waratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe .

- **Ku birebana no kuba Umujyi wa Kigali waraburanye wemera ibyo uregwa**

[10] Ku bijyanye no kuba Umujyi wa Kigali waraburanye wemera ibyo uregwa, Me Kaboyi Jean Bosco, uhagarariye Murekeyisoni Didacienne, avuga ko raporo zitandukanye zagiye zikorwa zigaragaza ko Umujyi wa Kigali ari wo ugomba kwishyura, zirimo ibaruwa Umujyi wa Kigali

wandikiye Akarere ka Nyarugenge ku wa 28/11/2018 ivuga ko Akarere kagomba kwishyura umuturage. Avuga ko hari na raporo y'umukozi wa MAJ wari ushinzwe gukurikirana iki kibazo yo ku wa 09/05/2018 igaragaza ko Umujyi wa Kigali wemeraga ibyo uregwa.

[11] Kuri iki kibazo, uhagarariye Umujyi wa Kigali avuga ko utigeze uburana wemera ibyo uregwa, kuko ntaho wigeze wemera ko ari wo ugomba guha Murekeyisoni Didacienne ingurane, kuko atari wo utunze ubwo butaka.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 52, igika cya 3, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ibikurikira: icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

[13] Dosiye igaragaza ko Murekeyisoni Didacienne yareze mu Rukiko Rwisumbuye rwa Nyarugenge asaba urwo Rukiko gutegeka Akarere ka Nyarugenge/ Umujyi wa Kigali kumwishyura ubutaka bwabo bwubatsweho ivuriro kandi batarahawe ingurane ikwiye.

[14] Dosiye igaragaza ko Umujyi wa Kigali, mu myiregurire yawo muri urwo Rukiko, wavuze ko Murekeyisoni Didacienne nta nyungu n'ubushobozi afite bwo kurega muri uru rubanza kuko umutungo aregera yakagombye kuwurega Minisiteri y'ubuzima (MINISANTE) kuko ari yo wanditsweho, bityo ko ikirego cya Murekeyisoni Didacienne kitagomba kwakirwa ngo gisuzumwe mu mizi yacyo, ko kandi kuba Umujyi wa Kigali warashowe mu rubanza na Murekeyisoni Didacienne, uyu yategekwa kuyishyura amafaranga y'ikurikiranarubanza.

[15] Mu Rukiko Rukuru nabwo, Umujyi wa Kigali wajuriye uvuga ko urega adafite inyungu n'ubushobozi byo kuwurega ku mutungo wanditse kuri Minisiteri y'Umutungo Kamere, ko hubatsemo "*Centre de santé*" ya Minisiteri y'Ubuzima, yubatswe ku nkunga ya CTB; ko rero hari kugobokeshwa Minisiteri y'Ubuzima ifitemo ibikorwa, uwo mutungo ukaba wanditse kuri Minisiteri y'Umutungo Kamere.

[16] Urukiko rurasanga ibyo uburanira Murekeyisoni Didacienne avuga ko Umujyi wa Kigali waburanye wemera ibyo uregwa nta shingiro bifite, kuko nk'uko bigaragajwe haruguru haba mu Rukiko Rwisumbuye rwa Nyarugenge cyangwa mu Rukiko Rukuru, ntaho Umujyi wa Kigali wigeze uburana wemera ibyo uregwa, ahubwo wavugaga ko kuba umutungo utawanditseho, Murekeyisoni Didacienne nta bubasha n'inyungu afite bwo kuwurega; bityo iyi nzitizi nta shingiro ifite.

- **Kumenya niba Umujyi wa Kigali waratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe**

[17] Ku bijyanye no kuba Umujyi wa Kigali waratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, Me Kaboyi Jean Bosco avuga ko ku kibazo cya mbere, cyo kumenya ko Murekeyisoni Didacienne adafite inyungu mu rubanza, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko afite inyungu n'ububasha byo kurega kuko Umujyi wa Kigali wakoze expropriation ariko ntiwamwishyura ingurane. Avuga ko no mu Rukiko Rukuru urwo Rukiko rwemeje ko inzitizi yatanzwe n'Umujyi wa Kigali ijyanye no kuba Murekeyisoni Didacienne nta nyungu n'ububasha afite byo kurega nta shingiro ifite, kuko Umujyi wa Kigali wakoze expropriation ariko ntiwishyure ingurane.

[18] Ku kibazo cya kabiri cyo kumenya niba Umujyi wa Kigali ugomba kwishyura ingurane, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko Murekeyisoni Didacienne ahabwa ingurane kuko

atishyuwe, ko kandi ari nabyo byemejwe n'Urukiko Rukuru. Naho ku kibazo cy'indishyi avuga ko inkiko zombi zageneye Murekeyisoni Didacienne indishyi.

[19] Uhagarariye Umujyi wa Kigali avuga ko Umujyi wa Kigali utigeze utsindwa mu nkiko zombi hashingiwe ku mpamvu zimwe. Asobanura ko mu rubanza RAD 00129/2020/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwavuze ko Umujyi wa Kigali ugomba kwishyura ingurane ikwiye rushingiye ku kuba hari undi mutungo wa Murekeyisoni Didacienne wigeze kwishyurwa n'Umujyi wa Kigali ufite agaciro ka 15.07.185 Frw, ku kuba warigeze gusaba ubwumvikane ku buryo nta wundi waregwa, no ku mabaruwa atandukanye y'Umujyi wa Kigali, ariko mu rubanza RADA 00092/2020/HC/KIG, Urukiko Rukuru ruvuga ko Umujyi wa Kigali ari wo ugomba kwishyura kuko Leta itazigera itambamira imikirize y'urubanza.

[20] Ku bijyanye n'ingurane ikwiye yaregewe, avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwategetse ingurane ingana na 99.542.500 Frw rushingiye ku kuba Umujyi wa Kigali warakoze exproriation ahubatse amashuri, ugomba no gutanga ingurane ahubatse *Centre de santé*, naho Urukiko Rukuru rutanga indishyi zirenga 100.000.000 Frw rushingiye ku kuba Umujyi wa Kigali utaragaragaje uwishyuye ukaba ugomba kwishyura.

[21] Avuga ko ku bijyanye n'indishyi mbonezamusaruro, ku rwego rwa mbere Umujyi wa Kigali utigeze utegekwa kuzishyura, ariko mu bujurire bwuririye ku bundi bwatanzwe na Murekeyisoni Didacienne, Urukiko Rukuru rurazitanga, ko ibyo nabyo bigaragaza ko Umujyi wa Kigali utatsinzwe hashingiwe ku mpamvu zimwe.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 52, igika cya 3, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko yibukijwe haruguru, iteganya ibikurikira: icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

[23] Ikibazo cyo kumenya niba impamvu zashingiweho umuburanyi atsindwa ku rwego rwa mbere n'urwa kabiri ari zimwe, kigomba gusuzumwa hasesengurwa imikirize y'urubanza ku rwego rwa mbere n'urwa kabiri, ingingo z'ingenzi zasuzumwe, impamvu buri rukiko rwashingiyeho kugira ngo rugere ku cyemezo, byaramuka bigaragaye ko ari zimwe, ubujurire ntibube buri mu bubasha bw'Urukiko rw'Ubujurire.

[24] Ku bijyanye n'ibisobanuro by'impamvu zimwe, Urukiko rw'Ikirenga ndetse n'uru Rukiko zemeza ko impamvu zimwe zivugwa muri iyi ngingo zigomba kumvikana nk'ibisobanuro buri Rukiko rwashingiyeho mu gufata icyemezo cyarwo rugendeye ku byabaye no ku byo amategeko ateganya, ko impamvu ari zo zishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo, akaba ari nazo ziherwaho ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko, bitewe n'uko buri cyemezo cy'Urukiko kigomba kuba cyasobanuriwe impamvu[1].

[25] Na none mu rubanza RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017, haburana RRA na SODAR Ltd, urwo Rukiko rwasobanuye ko mu gusuzuma ko

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[1]Urubanza RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS hagati ya Bank of Kigali Ltd na Mulisa Kana Martin rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017, igika cya 21. Reba kandi igika cya 12 cy'urubanza rubanziriza urundi mu rubanza RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019, haburana Koperative Dukundumurimo (KOADU) na King Construction and Service Company (KICOSECA).

impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa.

[26] Nk'uko bigaragara mu rubanza RAD 00129/2019/TGI/NYGE rwaciwe ku wa 11/09/2020 n'Urukiko Rwisumbuye rwa Nyarugenge, Murekeyisoni Didacienne asaba Urukiko gutegeka Akarere ka Nyarugenge kwishyura Murekeyisoni Didacienne (uhagarariye umuryango wa Cyavu Donath na Muhunde François) ubutaka bwabo bwubatsweho ivuriro kandi batarahawe ingurane ikwiye. Urukiko rwasuzumye ibibazo bibiri by'ingenzi, icyo kumenya niba Murekeyisoni Didacienne nta nyungu n'ububasha afite bwo kurega mu rubanza n'icyo kumenya niba Umujyi wa Kigali wategekwa guha Murekeyisoni Didacienne ingurane ku butaka bwe bungana na 3.981.7 m^2, hiyongeyeho icyo kumenya niba Umujyi wa Kigali wategekwa kwishyura indishyi zitandukanye muri urwo rubanza nk'ingaruka y'ikibazo cya kabiri.

[27] Mu rubanza RADA 00092/2020/HC/KIG rwaciwe ku wa 11/11/2021, Urukiko Rukuru rwasuzumye ikibazo cyo kumenya niba Umujyi wa Kigali utaragombaga kuregwa, hakagobokeshwa Leta y'u Rwanda, icyo kumenya niba nta mpamvu zashingiweho mu gutegeka Umujyi wa Kigali kwishyura ingurane z'umutungo uvugwa mu rubanza, n'icyo kumenya niba hari indishyi zagenwa muri urwo rubanza.

[28] Ku kibazo cyo kumenya niba Murekeyisoni Didacienne nta nyungu n'ububasha afite bwo kurega mu rubanza, Urukiko Rwisumbuye rwa Nyarugenge, mu gika cya 8, rushingiye ku kuba ahaburanwa ari aha ababyeyi ba Murekeyisoni Didacienne bazize Jenoside yakorewe Abatutsi mu mwaka wa 1994, no kuba yarigeze guhabwa ingurane ku mutungo we utimukanwa wasizwe n'ababyeyi be ungana na 12.862 m^2, akayihabwa n'Akarere ka Nyarugenge, nyuma yo kumukorera *expropriation*, rwemeje ko ari nawo ugomba kuregwa muri urwo rubanza cyane ko ari nawo wagiye umwandikira amabaruwa atandukanye aho wagiye umubwira ko azishyurwa kandi Umujyi wa Kigali ari wo wamusabye ko bakemura ikibazo cyabo mu bwumvikane, ko MINISANTE (Leta y'u Rwanda) atari yo igomba kuregwa muri urwo rubanza, ko kandi nta mpamvu yo kuyigobokesha, bityo inzitizi yatanzwe na Me Safari Vianney nta shingiro ifite, kuko urega afite inyungu n'ubushobozi bwo kurega muri urwo rubanza, akaba ikirego cya Murekeyisoni Didacienne kigomba kwakirwa kigasuzumwa mu mizi yacyo.

[29] Kuri iki kibazo, Urukiko Rukuru, mu gika cya 15 kugeza ku gika cya 20, rumaze kwibutsa icyo Urukiko Rwisumbuye rwa Nyarugenge rwakivuzeho, narwo rwasanze nta kimenyetso kivuguruza kuba Murekeyisoni Didacienne ari mwene Cyavu Donath, kandi ko umutungo uburanwa ukomoka mu muryango we, bityo rero afite inyungu y'ubushobozi bwo kuburanira uwo muryango mu gusaba ingurane kuri uwo mutungo ahagarariye umuryango, cyane ko n'ingurane yatanzwe ku gice kimwe cyishyuwe n'Umujyi wa Kigali ari we cyashyikirijwe kandi ari na we Umujyi wagiranye na we imishyikirano.

[30] Urukiko rurasanga kuri iki kibazo, inkiko zombi zabanje zarashingiye ku mpamvu z'uko Murekeyisoni ari mwene Cyavu Donath wazize Jenoside yakorewe Abatutsi mu mwaka wa 1994, kandi uwo mutungo ukaba wari uwe, ko kandi (Umujyi wa Kigali/Akarere ka Nyarugenge) hari ingurane wamuhaye ku gice kimwe, maze zemeza ko Murekeyisoni Didacienne afite inyungu n'ububasha byo kurega asaba kwishyurwa ingurane y'igice cyasigaye.

[31] Ku kibazo cyo kumenya niba Umujyi wa Kigali wategekwa guha Murekeyisoni Didacienne ingurane ku butaka bwe bungana na 3.981,7 m2, Urukiko Rwisumbuye rwa Nyarugenge rushingiye ku Ingingo ya 26 n'iya 28 z'Itegeko N° 18/2007 ryo ku wa 19/04/2007 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange zivuga ko uwimurwa ahabwa agaciro gakwiye (*juste compensation*)

nk'uko bigaragara mur'iryo genagaciro, no kuri raporo yakozwe n'itsinda ku kibazo cy'umuryango wa Murekeyisoni Didacienne ririmo abantu batandukanye ndetse n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyamirambo yanzuye ko umutungo wa Murekeyisoni Didacienne uri kuri UPI :1/01/08/04/2195 ufite ubuso bwa 3.481.7 m^2 utangwaho ingurane, rwemeje ko Umujyi wa Kigali ugomba guha Murekeyisoni Didacienne ingurane ikwiye ku mutungo we ingana na 99.542.500 Frw.

[32] Kuri iki kibazo, nubwo Urukiko Rukuru rwatanze ibisobanuro birambuye, ikibikubiyemo nyamukuru, ni uko Umujyi wa Kigali (icyo gihe kari Akarere ka Nyarugenge) ni wo wafashe umutungo uvugwa muri urwo rubanza, igipande kimwe cyubakwamo amashuri, ikindi cyubakwamo ivuriro; hagaragazwa ko ahubatse amashuri hubatswe kandi handitswe kuri Minisiteri y'Uburezi, ko ariko igipande gisigaye ari cyo gisabirwa ingurane, Umujyi wa Kigali ntuhakana ko hafashwe n'Akarere ka Nyamirambo, n'ubwo uvuga ko atari wo washyizemo ibikorwa, ko kandi utugaragaza ko hishyuwe nk'uko byemejwe n'Ubuyobozi bwariho mu mwaka wa 2002 bwemeye gutanga ingurane; kandi ntuhakana ko hariho ibikorwa by'inyungu rusange.

[33] Urukiko rurasanga kuri iki kibazo, inkiko zombi zabanje zashingiye ku mpamvu imwe nyamukuru yo kuba raporo zigaragaza ko igihande cyasigaye cyakoreshejwe ku nyungu rusange, ko kandi kitigeze kigenerwa ingurane, zemeza ko Umujyi wa Kigali, ugomba guha Murekeyisoni Didacienne ingurane ikwiye.

[34] Urukiko rurasanga ibyo uhagarariye Umujyi wa Kigali avuga ko Urukiko Rukuru rwatanze indishyi z'akababaro zingana na 5.000.000 Frw, ariko zikaba zitaratanzwe n'Urukiko Rwisumbuye rwa Nyarugenge, nubwo koko ariko byagenze, bitashingirwaho hemezwa ko ubujurire bwa kabiri buri mu bubasha bw'Urukiko rw'Ubujurire, kuko ibijyanye n'indishyi ari ingaruka kandi nk'uko byagaragajwe haruguru ku bibazo nyamukuru byaburanywe mu nkiko zombi zabanje, Umujyi wa Kigali watsinzwe hashingiwe ku mpamvu zimwe.

[35] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga, Ubujurire bwa kabiri bwatanzwe n'Umujyi wa Kigali butakiriwe kuko butari mu bubasha bw'uru Rukiko kubera ko watsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe.

- **Kumenya niba Murekeyisoni Didacienne yagenerwa amafaranga y'igihembo cya Avoka n'ikurikiranarubanza**

[36] Uhagarariye Murekeyisoni Didacienne avuga ko kuba Umujyi wa Kigali utarubahirije ibiteganywa n'amategeko ku gihe ukwiye kwishyura amafaranga y'ikurikiranarubanza angana 5.000.000 Frw akubiyemo n'ibyakoreshejwe bitandukanye birimo *expertise*, no kwishyura 1.000.000 Frw y'igihembo cy'Avoka hashingiwe ku ngingo ya 34 y'Amabwiriza nimero 01/2014 agenga ibihembo mbonera by'Abavoka.

[37] Uhagarariye Umujyi wa Kigali yiregura ku mafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka Murekeyisoni Didacienne asaba avuga ko nta shingiro afite, ko kandi aramutse atanzwe hatangwa kimwe cya kabiri (½) cya 500.000 Frw kuko uko urubanza rugenda ruzamuka igihembo cya Avoka kigabanuka nk'uko biteganywa mu mabwiriza agenga ibihembo mbonera by'Abavoka.

UKO URUKIKO RUBIBONA

[38] 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 ibikurikira: ikirego cy'amafaranga y'ikurikiranarubanza ni 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.

[39] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Murekeyisoni Didacienne asaba akwiye kuyahabwa, kuko byabaye ngombwa ko ashaka Avoka wo kumuburanira, ariko ayo asaba ni menshi harebwe ko urubanza rugarukiye ku nzitizi y'iburabubasha, bityo mu bushishozi bwarwo, rutegetse Umujyi wa Kigali kwishyura Murekeyisoni Didacienne 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza kuri uru rwego, yose hamwe akaba 700.000 Frw.

III. ICYEMEZO CY'URUKIKO

[40] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanzwe na Murekeyisoni Didacienne ifite ishingiro.

[41] Rwemeje ko ubujurire bw'Umujyi wa Kigali butari mu bubasha bw'Urukiko rw'Ubujurire.

[42] Rutegetse Umujyi wa Kigali kwishyura Murekeyisoni Didacienne 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego, yiyongera kuyo yagenewe n'inkiko zabanje.

[43] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.