Re NTEZIRYAYO N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INTERT/RCOM 00001/2020/CA (Mukanyundo, P.J., Munyangeri na Ngagi, J.) 04 Nzeli 2020]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gusobanuza urubanza – Irangizwa ry'urubanza ryarangije gushyirwa mu bikorwa mu gihe umuburanyi afite uburenganzira bwo kongera gutanga ikirego – Iyo urukiko rusuzumye urubanza rugasanga urwaruciye ku rwego rwa mbere nta bubasha rwari rufite rugategeka ko ibintu bisubira uko byari biri, nta muburanyi wabyuririraho asaba gusobanuza urubanza ngo agaruzwe amafaranga yatanze arushyira mu bikorwa ngo bihabwe ishingiro mu gihe urukiko rutigeze rufata icyemezo kubirebana ry'irangizarubanza ryakozwe.

Incamake y'ikibazo: Nteziryayo na Mukabideri bareze Nyiransengimana mu Rukiko rw'Ubujurire basaba gusubirishamo urubanza ku mpamvu z'akarengane urubanza rwari rwaraciwe n'Urukiko rw'Ibanze rwa Nyamata aho rwabategetse kwishyura 3.700.000 frw Nyiransengimana akomoka ku bukode bw'inzu bamukodeshaga.

Mu gusuzuma urubanza, Urukiko rw'ubujurire rwatesheje agaciro urubanza rwaciwe n'Urukiko rwa Nyamata kuko rutari rufite ububasha, kuko rwaburanishije urubanza rw'ubucuruzi ariko ntirukurikize ibiteganywa n'itegeko ku byerekeranye n'imiburanishirize y'ibirego bishingiye ku kiburanwa gifite agaciro gato, maze rutegeka ko ruteshwa agaciro, bityo n'ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gishingiye kuri urwo rubanza kikaba rutegeka ko kitagomba kwakirwa. Rwemeje kandi ko Nyiransengimana yakongera agatanga ikirego bundi bushya.

Nteziryayo na Mukabideri batanze ikirego mu Rukiko rw'Ubujurire basaba gusobanuza urubanza rwaciye aho bavugaga ko kuba Urukiko rw'Ubujurire rwaratesheje agaciro urubanza rwaciwe n'Urukiko rw'Ibanze rwa Nyamata, bivuze ko ibyakozwe mbere byose biba imfabusa, bityo ibintu bikaba bigomba gusubira uko byari bimeze mbere, n'ishyirwa mu bikorwa ryarwo rigateshwa agaciro. Bavugaga ko kandi ari muri urwo rwego basaba ko Nyiransengimana abasubiza 3.700.000 Frw bamuhaye ubwo bashyiraga mu bikorwa icyemezo cy'Urukiko rw'Ibanze rwa Nyamata.

Incamake y'icyemezo: Gushyira mu bikorwa icyemezo cy'urukiko cyateshejwe agaciro ntibyaba inzira yo gusobanuza urubanza mu gihe bitafashweho icyemezo n'urukiko kuko bigaragara abagitanze bagamije ko hafatwa ibyemezo bitandukanye n'ibyo urukiko rwafashe, kandi ibyo bikaba bitandukanye n'ibyo amategeko ateganya, kuko gusobanuza urubanza, atari uguhindura imikirize y'urubanza. Bityo, ikirego cya Nteziryayo Vianney na Mukabideri Esther nta shingiro gifite kuko batagaragaza ko icyemezo cyafashwe mu rubanza n° RS/INJUST/RCOM 00003/2019/CA kidasobanutse cyangwa kitumvikana.

Ikirego nta shingiro gifite.
Nta mpamvu ihari yo gusobanura urubanza n° RS/INJUST/RCOM 00003/2019/CA.

Amategeko yashingiweho:

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 138.

Imanza zifashishijwe:

Urubanza nº RS/INTER/CIV/0003/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/09/2008 Dusingizemaliya Bernadette aburana na Mudaheranwa hamwe na Mukanyindo Marie asaba gusobanuza urubanza nº RA 0209/13.03/99 rwaciwe n'Urukiko Rusesa Imanza ku wa 12/05/2000.

Urubanza nº RS/INTER/RC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 19/10/2018, haburana Mukandahiro Florence asobanuza urubanza nº RCAA 0007/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nteziryayo Vianney na Mukabideri Esther bareze Nyiransengimana Madeleine mu Rukiko rw'Ubujurire, basaba gusubirishamo ku mpamvu z'akarengane urubanza nº RCOM 00001/2018/TB/NYMTA rwaciwe n'Urukiko rw'Ibanze rwa Nyamata ku wa 18/04/2019, urwo rubanza rukaba rwari rwabategetse kwishyura Nyiransengimana Madeleine 3.450.000 Frw y'igihombo bamuteje kubera gusesa amasezerano y'ubukode bw'inzu bari bafitanye.

[2] Mu rubanza nº RS/INJUST/RCOM 00003/2019/CA rwaciwe ku wa 08/05/2020, Urukiko rw'Ubujurire rwasanze Urukiko rw'Ibanze rwa Nyamata rwaraburanishije urubanza nº RCOM 00001/2019/TB/NYMTA nta bubasha rufite, kuko rwaburanishije urubanza rw'ubucuruzi ariko ntirukurikize ibiteganywa n'Itegeko ku byerekeranye n'imiburanishirize y'ibirego bishingiye ku kiburanwa gifite agaciro gato, maze rutegeka ko ruteshwa agaciro, bityo n'ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gishingiye kuri urwo rubanza kikaba kitagomba kwakirwa, Nyiransengimana Madeleine akaba yakongera agatanga ikirego bundi bushya. Urukiko rwategetse kandi Nteziryayo Vianney na Mukabideri Esther gufatanya guha Nyiransengimana Madeleine 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[3] Ku wa 10/06/2020, Nteziryayo Vianney na Mukabideri Esther batanze ikirego gisaba gusobanuza urubanza No RS/INJUST/RCOM 00003/2019/CA, bavuga ko ubwo urubanza rwaciwe n'Urukiko rw'Ibanze rwateshejwe agaciro, ibintu byagombaga gusubira uko byari bimeze mbere, maze bagasubizwa amafaranga batanze urwo rubanza rurangizwa.

[4] Urubanza rwaburanishijwe mu muhezo ku wa 01/09/2020, Urukiko rwemeza ko ruzasomwa ku wa 04/09/2020 saa tatu za mugitondo.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO

Kumenya niba kuba Urukiko rw'Ubujurire rutarafashe icyemezo ku irangizarubanza ryakozwe ku rubanza No RCOM 00001/2019/TB/NYMTA bituma urubanza No RS/INJUST/RCOM 00003/2019/CA rugomba gusobanurwa

[5] Mu mwanzuro wabo, Nteziryayo Vianney na Mukabideri Esther bavuga ko kuba Urukiko rw'Ubujurire rwaratesheje agaciro urubanza rwaciwe n'Urukiko rw'Ibanze rwa Nyamata, bivuze ko ibyakozwe mbere byose biba imfabusa, bityo ibintu bikaba bigomba gusubira uko byari bimeze mbere, n'ishyirwa mu bikorwa ryarwo rigateshwa agaciro. Bavuga ko ari muri urwo rwego basaba ko Nyiransengimana abasubiza 3.700.000 Frw bamuhaye ubwo bashyiraga mu bikorwa icyemezo cy'Urukiko rw'Ibanze rwa Nyamata.

UKO URUKIKO RUBIBONA

[6] Ingingo ya 138 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 ko ″Ibirego bisaba gusobanura cyangwa gukosora amakosa ari mu rubanza biregerwa urukiko rwaciye urwo rubanza, bigasuzumwa n'umucamanza waruciye. Iyo bidashobotse bishyikirizwa undi mucamanza″.

[7] Nk'uko byagiye bisobanurwa n'Urukiko rw'Ikirenga ndetse n'izindi nkiko, ikirego gisaba gusobanura urubanza kiba kigamije gusobanura urubanza rwaciwe mu buryo butumvikana cyangwa mu buryo bushobora kumvikana mu buryo bunyuranye.

[8] Ku birebana n'uru rubanza, kopi y'urubanza n° RS/INJUST/RCOM 00003/2019/CA igaragaza ko nyuma yo kwerekana ko Urukiko rw'Ibanze rwa Nyamata rwaciye urubanza No RCOM 00001/2019/TB/NYMTA rutari mu bubasha bwarwo, kuko ubwo bubasha bwari ubw'Urukiko rw'Ubucuruzi, Urukiko rw'Ubujurire rwafashe icyemezo cyo kurutesha agaciro Nyiransengimana Madeleine akongera agatanga ikirego bundi bushya, bityo n'ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gishingiye kuri urwo rubanza cyatanzwe na Nteziryayo Vianney na Mukabideri Esther kikaba kitagomba kwakirwa ngo gisuzumwe n'Urukiko rw'Ubujurire[1].

[9] Urukiko rurasanga icyemezo cyo gutesha agaciro urubanza No RCOM 00001/2019/TB/NYMTA cyafashwe mu rubanza No RS/INJUST/RCOM 00003/2019/CA gisobanutse ndetse nta rujijo giteye; hakaba nta kundi cyakumvikana uretse kuba urwo rubanza rwaciwe n'Urukiko rw'Ibanze rwa Nyamata rutakiriho, ibintu bigasubira uko byari bimeze mbere y'uko urwo Rukiko ruregerwa.

[10] Urukiko rurasanga ibyo Nteziryayo Vianney na Mukabideri Esther basaba ko basubizwa 3.760.000 Frw bahaye Nyiransengimana Madeleine ubwo bashyiraga mu bikorwa icyemezo cy'urubanza rwateshejwe agaciro, bitari mu rwego rw'isobanura rubanza, ahubwo icyo bagamije ari uko hafatwa ibyemezo bitandukanye n'ibyo Urukiko rwafashe, kandi ibyo bikaba bitandukanye n'ibyo amategeko ateganya, kuko gusobanuza urubanza, atari uguhindura imikirize y'urubanza. Aha rero akaba Nteziryayo Vianney na Mukabideri Esther badatandukanya kunenga imikirize y'urubanza bikorwa binyuze mu nzira y'ubujurire zaba ari izisanzwe cyangwa izidasanzwe mu gihe bishoboka, no gusaba gusobanura urubanza rwaciwe mu buryo butumvikana, bushobora kumvikana bu buryo bunyuranye; iki gitekerezo kikaba kigaragara no mu rubanza No RS/INTER/CIV/0003/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/09/2008 Dusingizemaliya Bernadette aburana na Mudaheranwa hamwe na Mukanyindo Marie (igika cya 18) asaba

[1] Igika cya 17, 19, 25 n'icya 26.

gusobanuza urubanza nº RA 0209/13.03/99 rwaciwe n’Urukiko Rusesa Imanza ku wa 12/05/2000, n’urubanza nº RS/INTER/RC 00002/2018/SC rwaciwe ku wa 19/10/2018, haburana Mukandahiro Florence asobanuza urubanza No RCAA 0007/15/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 13/11/2015 (igika cya 9).

[11] Urukiko rurasanga n’ubwo Nteziryayo Vianney na Mukabideri Esther baba baravuze ko urubanza nº RCOM 00001/2018/TB/NYMTA rwarangijwe mu iburanisha ry’urubanza No RS/INJUST/RCOM 00003/2019/CA basaba gusobanuza, batagomba kubiheraho bavuga ko urubanza rudasobanutse, mu gihe Urukiko rutigeze rufata icyemezo ku birebana n’irangizarubanza ryakozwe, kuko rwasanze bihagije kugarukira ku gutesha agaciro urubanza nº RCOM 00001/2018/TB/NYMTA, kandi icyo cyemezo kikaba cyumvikana nk’uko byasobanuwe, bityo rurasanga ibirebana no gusubizwa amafaranga bari batanze mu kurangiza urubanza ntacyo rwabisobanuraho, kuko bitigeze bifatwaho icyemezo nk’uko bimaze kuvugwa.

[12] Hashingiwe ku bisobanuro bitanzwe haruguru, Urukiko rw’Ubujurire rurasanga Nteziryayo Vianney na Mukabideri Esther batagaragaza ko icyemezo cyafashwe mu rubanza No RS/INJUST/RCOM 00003/2019/CA kidasobanutse cyangwa kitumvikana, bityo ikirego cyabo kikaba nta shingiro gihawe.

III. ICYEMEZO CY’URUKIKO

[13] Rwemeje ko ikirego cya Nteziryayo Vianney na Mukabideri Esther nta shingiro gifite; Rwemeje ko nta mpamvu ihari yo gusobanura urubanza nº RS/INJUST/RCOM 00003/2019/CA.