KAYITESI N'ABANDI v MUKANKUSI N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE - RS/INJUST/RC 00007/2023/CA (Rukundakuvuga, P.J., Ngagi, Munyangeri, J.) 28 Kamena 2024]

Amategeko agenga imanza z'imbonezamubano – Imiburanishirize y'imanza – Ukwikiranura – Amasezerano y'ubwumvikane - Amasezerano y'ubwumvikane ababuranyi bashyizeho umukono, akemura ikibazo bari bafitanye, agasoza urubanza rwari hagati yabo ndetse akaba agomba kubahirizwa n'abayagiranye.

Incamake y'ikibazo: Mukankusi n'umugabo we witwa Rutagarama bagurishijwe na Niyonsenga isambu iherereye ku Muyumbu mu karere ka Rwamagana ariko baza kuyisiga Leta iza kuyifata nk'imitungo yasizwe na beneyo iyiha Murenzi na Musinguzi kugira ngo bayicunge. Gaperi na bashiki be bo kwa nyina wabo aribo Kayitesi na Uwimana batanze ikirego mu Rukiko Rwisumbuye rwa Ngoma barega Mukankusi na Rutagarama basaba gutesha agaciro amasezerano y'ubugure bagiranye na Niyonsenga kuko Niyonsenga yagurishije iyo sambu batamuhaye uburenganzira kandi bayifatanije. Bagobokesheje kandi Akarere ka Rwamagana ndetse na Murenzi na Musinguzi.

Akarere ka Rwamagana katanze inzitizi y'iburabubasha kuko icyemezo kafashe cyo kwegurira uwo mutungo abawucunga ari icyemezo cy'ubutegetsi. Urukiko rwemeje ko ikirego kidafite ishingiro, ko kugobokesha Akarere ka Rwamagana mu rubanza rw'imbonezamubano bitakiriwe, ko amasezerano y'ubugure aregerwa agumyeho.

Abarega batanze ubujurire mu Rukiko Rukuru basaba ko rwasuzuma niba ikirego cyabo kitaragombaga kwakirwa ndetse no kugobokesha Akarere ka Rwamagana. Mukankusi na Rutagarama ntibitabye Urukiko kandi ntibanatanze n'imyanzuro yo kwiregura. Niyonsenga ntiyitabye ariko yari yatanze imyanzuro yo kwiregura avuga ko umutungo yagurishije ari uwe yazunguye adasangiye na bashiki be. Urukiko rukuru rwemeje ko ubujurire nta shingiro bufite ko amasezerano y'ubugure agumanye agaciro kayo.

Abarega basabye ko urubanza rwabo rusubirwamo ku mpamvu z'akarengane urubanza ruhabwa Urukiko rw'Ubujurire maze rwongera kuruburanisha. Umunsi w'iburanisha, ababuranyi bose uretse Mukankusi na Rutagarama baritabye maze urukiko rubagira inama yo gukemura ikibazo cyabo mu bwumvikane. Nyuma y'uko kumvikana kwagiye kunanirana, urukiko rwakomeje kubagira inama y'ibyiza byo gukemura ikibazo mu bwumvikane. Babifahsijwemo n'Urukiko, baje kwikiranura mu bwumvikane bemeranywa ko abarega bafite uburenganzira bungana na 2/3 by'umutungo wagurishijwe bityo ko bakwiye guhabwa agaciro kawo mu mafaranga.

Ikibazo cyari gisigaye gusuzumwa n'icyo kumenya ingaruka z'amasezerano y'ubwumvikane yabaye hagati y'ababuranyi ku rubanza N° RS/INJUST/RC 00007/2023/CA rwari mu Rukiko rw'Ubujurire. Ababuranyi bombi bemeranya kuri ayo masezerano kandi bemera kuyashyira mu bikorwa bityo urubanza rukarangira.

Inshamake y'icyemezo: Amasezerano y'ubwumvikane ababuranyi bashyizeho umukono, akemura ikibazo bari bafitanye, agasoza urubanza rwari hagati yabo ndetse akaba agomba kubahirizwa n'abayagiranye.

Amasezerano y'ubwimvikane yabaye hagati y'ababuranyi ashoje urubanza.

Amategeko yashingiweho:
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 9.

Imanza zifashishijwe:
RCA 00010/2023/CA, Luhinda Junior na Umutesi Faith, rwaciwe n'Urukiko rw'Ubujurire ku wa 13/03/2024.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mukankusi Charlotte n'umugabo we Rutagarama Alphonse bakoranye n'uwitwa Niyonsenga Augustin amasezerano y'ubugure bw'isambu iherereye mu Mudugudu wa Rugarama, mu Kagari k'Akinyambo, mu Murenge wa Muyumbu, mu Karere ka Rwamagana, nyuma baza gusiga uwo mutungo wabo ntawe bawusigiye, bituma Leta iwubarira mu mitungo igomba gucunga hashingiwe ku biteganywa n'Itegeko Nº 39/2015 ryo ku wa 22/08/2015 ryerekeye imicungire y'imitungo yasizwe na bene yo ndetse n'Iteka rya Minisitiri Nº 003/MOJAJ/2017 ryo ku wa 07/02/2017 rigena uburyo bwo gucunga imitungo yasizwe na bene yo.

[2] Gaperi Elie afatanyije na bashiki be bo kwa nyina wabo harimo Uwimana Patricie na Kayitesi Claudine bareze Mukankusi Charlotte n'umugabo we Rutagarama Alphonse mu Rukiko Rwisumbuye rwa Ngoma, basaba gutesha agaciro amasezerano y'ubugure yakozwe hagati ya Niyonsenga Augustin na Mukankusi Charlotte na Rutagarama Alphonse, kubera ko mu kugurisha, Niyonsenga Augustin yirengagije bashiki be bahagarariwe n'abana babo. Muri urwo rubanza bagobokeshejemo nyirarume witwa Niyonsenga Augustin, AKARERE KA RWAMAGANA, abeguriwe uwo mutungo kugira ngo bawucunge aribo Murenzi Jean Bosco na Musinguzi Hannington,

[3] Murenzi Jean Bosco na Musinguzi Hannington n'ubunganira batanze inzitizi yo kutakira ikirego bavuga ko Urukiko rwaregewe rudafite ububasha bushingiye ku kiburanwa kubera ko amasezerano aburana afite agaciro katarengeje amafaranga y'u Rwanda ibihumbi magana atandatu (600.000 Frw).

[4] Uhagarariye AKARERE KA RWAMAGANA yireguye avuga ko ako Karere katari gakwiye kugobokeshwa mu rubanza rw'imbonezamubano ngo kubera ko icyemezo kafashe cyo kwegurira abatsindiye isambu mu ipiganwa, ari icyemezo cy'ubutegetsi.

[5] Mu rubanza n° RC 00123/2019/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 11/02/2021, urwo Rukiko rwemeje ko:

- ikirego cya Gaperi Elie, Uwimana Patricie na Kayitesi Claudine, nta shingiro gifite;
- kugobokesha AKARERE KA RWAMAGANA, Murenzi Jean Bosco na Musinguzi Hannington mu rubanza rw'imbonezamubano bitakiriwe;

- amasezerano y’ubugure yakozwe hagati ya Mukankusi Charlotte n’umugabo we Rutagarama Alphonse bagura isambu ya Niyonsenga Augustin agumyeho;

- Gaperi Elie, Uwimana Patricie na Kayitesi Claudine bishyura Murenzi Jean Bosco na Musinguzi Hannington indishyi n’igihembo cya Avoka kingana n’amafaranga ibihumbi magana atanu na mirongo itanu (550.000 Frw) agatangwa mu gihe gitegetswe;

- Gaperi Elie, Uwimana Patricie na Kayitesi Claudine bishyura AKARERE KA RWAMAGANA igihembo cya Avoka kingana n’amafaranga ibihumbi magana atanu (500.000 Frw) agatangwa mu gihe gitegetswe;

[6] Gaperi Elie, Uwimana Patricie na Kayitesi Claudine bajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana, barusaba ibikurikira:

- kongera gusuzuma niba ukugobokeshwa kw’AKARERE KA RWAMAGANA, Murenzi Jean Bosco na Musinguzi Harriton kutaragombaga kwakirwa;

- gusuzuma niba ikirego cyabo kitaragombaga guhabwa ishingiro, maze amasezerano y’ubugure baregeye agateshwa agaciro.

[7] Mukankusi Charlotte na Rutagarama Alphonse ntibatanze imyanzuro yo kwiregura, ntibbanitaba Urukiko ku munsi w’iburanisha. Niyonsenga Augustin nawe ntiyitabye Urukiko ariko yari yaratanze umwanzuro wo kwiregura, avuga ko ubujurire bwatanzwe nta shingiro bufite, kubera ko umutungo yagurishije wari uwe yari yarazunguye, akaba atari awusangiye n’abishywa be. Urukiko Rukuru, Urugereko rwa Rwamagana rwaburanishije urubanza Mukankusi Charlotte, Rutagarama Alphonse na Niyonsenga Augustin badahari, ariko bifatwa nk’aho rwaburanishijwe bahari, hashingiwe ku ngingo ya 57 y’Itegeko n˚ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubuuruzi, iz’umurimo n’iz’ubutegetsi.

[8] Murenzi Jean Bosco na Musinguzi Hannington bireguye bavuga ko nta buryo bagombaga kugobokeshwa ku gahato mu rubanza rwajuririwe, kandi abarega bari bararetse ikirego cyo gutesha agaciro ibyangombwa bari barahawe hashingiwe ku cyemezo cy’Umuyobobozi w’Akarere ka Rwamagana gikubiye mu ibaruwa n˚ 3053/05.01 cyo ku wa 07/08/2019. Bashoje basaba guhabwa amafaranga y’ikurikiranarubanza n’igihembo cya Avoka.

[9] Uhagarariye Akarere ka Rwamagana yireguye avuga ko Akarere ahagarariye katagombaga kugobokeshwa ku gahato mu rubanza rwajuririwe kubera ko atari ko kari karafashe icyemezo ku butaka buburanwa, ko ahubwo icyo cyemezo cyari cyarafashwe na Minisiteri y’Ubutabera. Yashoje asaba Urukiko gutegeka abarega gusubiza ako Karere amafaranga y’ikurikiranarubanza n’igihembo cya Avoka.

[10] Mu rubanza N˚ RCA 00015/2021/HC/RWG rwaciwe n’Urukiko Rukuru, Urugereko rwa Rwamagana, urwo Rukiko rushingiye ku ngingo ya 115, iya 12, iya 111 z’Itegeko N˚ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ku ngingo ya 3 y’Itegeko N˚ 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, rwemeje ko:

- ubujurire bwa Gaperi Elie, Uwimana Patricie na Kayitesi laudine, bta shingiro bufite;

- amasezerano y'ubugure yabaye hagati ya Niyonsenga Augustin, Rutagarama Alphonse na Mukankusi Charlotte agumanye agaciro kayo;

- Gaperi Elie, Uwimana Patricie na Kayitesi Claudine bafatanya kwishyura Akarere ka Rwamagana igihembo cya Avoka kingana n'amafaranga y'u Rwanda ibihumbi magana abiri na mirongo itanu (250.000 Frw), kiyongera kucyo baciwe mu rubanza rujuririrwa;

- Gaperi Elie, Uwimana Patricie na Kayitesi Claudine, bafatanya kwishyura Murenzi Jean Bosco na Musinguzi Hannington igihembo cya Avoka kingana n'amafaranga y'u Rwanda ibihumbi magana abiri na mirongo itanu (250.000 Frw) kiyongera kuyo baciwe mu rubanza rujuririrwa;

- urubanza N˚ RC 00123/2019/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 11/02/2021 rudahindutse mu ngingo zarwo zose, uretse ibihembo by'Abavoka byiyongereyeho;

- ingwate y'amagarama abarega batanze bajurira, ihwanye n'ibyakozwe mu rubanza.

[11] Gaperi Elie, Uwimana Patricie na Kayitesi Claudine basabye gusubirishamo ku mpamvu z'akarengane urubanza N˚ RCA 00015/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 09/11/2021, maze mu cyemezo cye N˚ 055/CJ/2023 cyo ku wa 03/05/2023, Perezida w'Urukiko rw'Ikirenga yemeza ko rusubirwamo ku mpamvu z'akarengane, rukazaburanishwa n'Urukiko rw'Ubujurire. Urwo rubanza rwahawe N˚ RS/INJUST/RC 00007/2023/CA, nyuma y'imihango ntegurarubanza yose, hemezwa ko ruzaburanishwa ku wa 05/02/2024.

[12] Uwo munsi ababuranyi baritabye bose, Kayitesi Claudine, Gaperi Elie na Uwimana Patricie bahagarariwe na Me Gasasira Jean Claude, Niyonsenga Augustin yunganiwe na Me Muhire Jean Marie Eugēne, Murenzi Jean Bosco na Musinguzi Hannington bahagarariwe na Me Rugeyo Jean, AKARERE KA RWAMAGANA gahagarariwe na Me Gumisiriza Hilary. Urukiko rwagiriye ababuranyi inama yo kurangiza ikibazo mu bwumvikane, bemera kujya mu biganiro ariko ntibashobora kumvikana.

[13] Iburanisha ryimuriwe ku wa 16/02/2024, ababuranyi bahagarariwe, undi yunganiwe nka mbere, bamenyesha Urukiko ko umutungo uburanwa utakiri mu maboko y'abo AKARERE KA RWAMAGANA kari karaweguriye, ko ufite UPI: 5/01/10/01/316 wagurishijwe naho ufite UPI: 5/01/10/01/ 319 ukaba warahawe GT BANK nk'ingwate ndetse ikaba irimo no kuburanwa mu Rukiko Rwisumbuye rwa Ngoma. Iburanisha ryongeye gusubikwa kugira ngo abarebwa n'imitungo iburanwa muri uru rubanza bose bazahure bagirane ibiganiro byo kurangiza ikibazo mu bwumvikane, uruhande rw'abarega ruza kumenyesha Urukiko ko batashoboye kumvikana, iburanisha rishyirwa ku wa 03/06/2024.

[14] Uwo munsi ababuranyi baritabye, Gaperi Elie, Uwimana Ptricie na Kayitesi Claudine bahagarariwe na Me Gasasira Jean Claude, Niyonsenga Augustin yunganiwe na Me Muhire Jean Marie Eugēne, Murenzi Jean Bosco na Musinguzi Hannington bunganiwe na Me Rugeyo Jean, AKARERE KA RWAMAGANA gahagarariwe na Me Gumisiriza Hilary. Urukiko rumaze gusobanurira ababuranyi barwitabye inyungu zo gukemura ikibazo bafitanye mu bwumvikane, bemera ko rubafasha gukemura icyo kibazo mu bwumvikane. Ibiganiro byarangiye bemeye kurangiza ikibazo bafitanye mu bwumvikane.

[15] Nyuma y'ibiganiro bigamije kurangiza ikibazo mu bwumvikane, ababuranyi, Gaperi Elie, Uwimana Patricie, Kayitesi Claudine, Niyonsenga Augustin, Murenzi Jean Bosco, Musinguzi Kadurira Hannington n'Akarere ka Rwamagana, babifashijwemo n'Urukiko, bageze ku myanzuro ikurikira:

a. Gaperi Elie, Uwimana Patricie na Kayitesi Claudine bagomba kwishyurwa agaciro k'ubutaka mu mafaranga y'u Rwanda angana na miliyoni mirongo irindwi n'icyenda n'ibihumbi magana acyenda na mirongo icyenda n'umunani (79,998,000 Frw), ku buso bungana n'ibihumbi cumi na bitatu na magana atatu na mirongo itatu na gatatu (13,333 sqm) gukuba n'amafaranga ibihumbi bitandatu (6,000 Frw) y'agaciro mu mafaranga kuri buri sqm, akaba ari byo bigize uburenganzira bw'abarega bungana na bibiri bya gatatu (2/3) by'ubuso baregeraga;

b. Akarere ka Rwamagana kagomba gusubiza abarega amafaranga y'u Rwanda miliyoni indwi, ibihumbi magana abiri na mirongo icyenda na bine n'ijana na cumi n'arindwi (7,294,117 Frw), ahwanye na bibiri bya gatatu (2/3) by'agaciro mu mafaranga ababuguze batanze, akaba agomba gukurwa kuri konti yabitsweho iri muri Banki Nkuru y'u Rwanda (BNR);

c. Musinguzi Kadurira Hannington na Murenzi Jean Bosco bafatanyije, bagomba kwishyura amafaranga y'u Rwanda miliyoni mirongo irindwi n'ebyiri, ibihumbi magana arindwi na magana inani na mirongo inani n'atatu (72, 700, 883 Frw), buri wese akishyura mirongo itanu ku ijana (50%) yayo, ni ukuvuga amafaranga y'u Rwanda miliyoni mirongo itatu n'esheshatu, ibihumbi magana atatu na mirongo itanu na kimwe na magana acyenda na mirongo ine na rimwe (36, 351, 941 Frw);

d. Uwimana Patricie na Kayitesi Claudine bazatwara kimwe cya kabiri (1/2) cy'amafaranga angana na miliyoni mirongo irindwi n'ebyiri, ibihumbi Magana arindwi na magana inani na mirongo inani n'atatu (72, 700,883 Frw), ikindi kimwe cya kabiri (1/2) gisigaye gitwarwe na Gaperi Elie;

e. Akarere ka Rwamagana gasubiza ayo mafaranga mu gihe cy'ukwezi kumwe (1) uhereye igihe inyandiko y'ubwumvikane ishyiriweho umukono;

f. Musinguzi Kadurira Hannington na Murenzi Jean Bosco, buri wese agomba kuba yishyuye amafaranga amureba bitarenze itariki ya 30/10/2024;

[16] Ikibazo gisigaye gusuzumwa muri uru rubanza akaba ari ukumenya ingaruka z'amasezerano y'ubwumvikane yabaye hagati y'ababuranyi ku rubanza N° RS/INJUST/RC 00007/2023/CA rwari mu Rukiko rw'Ubujurire.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya ingaruka z'amasezerano y'ubwumvikane yabaye hagati y'ababuranyi ku rubanza n° RS/INJUST/RC 00007/2023/CA rwari mu Rukiko rw'Ubujurire

[17] Ingingo ya 9, igika cya gatatu, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Umucamanza ashobora gushishikariza ababuranyi gukoresha ubwunzi iyo abona ko

ari bwo buryo buboneye mu kurangiza impaka. Ashobora kubunga ubwe cyangwa akabohereza mu bwunzi, agasubika urubanza mu gihe ubwunzi burimo gukorwa".

[18] Ikibazo nk'iki cyatanzweho umurongo mu rubanza N° RCA 00010/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 13/03/2024, haburana Luhinda Junior na Umutesi Faith. Muri urwo rubanza, Urukiko rwafashije ababuranyi mu biganiro byo kurangiza ikibazo bari bafitanye mu bwumvikane, bemera ko bumvikanye, rwanzura ko ayo masezerano y'ubwumvikane ababuranyi bashyizeho umukono, akemuye ikibazo bari bafitanye kandi ko asoje urubanza N° RCA 00010/2023/CA rwari hagati yabo ndetse akaba agomba kubahirizwa n'abayagiranye.

[19] Kubera izo mpamvu, no muri uru rubanza, uru Rukiko rusanga aya masezerano y'ubwumvikane yashyizweho umukono n'abagiranye ibiganiro ku wa 03/06/2024 bavuzwe haruguru, akemuye ikibazo bari bafitanye kandi akaba asoje urubanza N° RS/INJUST/RC 00007/2023/CA rwari mu Rukiko rw'Ubujurire hagati ya Gaperi Elie, Uwimana Patricie, Kayitesi Claudine na Mukankusi Charlotte, Rutagarama Alphonse, Niyonsenga Augustin, Murenzi Jean Bosco, Musinguzi Kadurira Hannington n'Akarere ka Rwamagana, kandi akaba agomba kubahirizwa n'impande zose ziburana.

III. ICYEMEZO CY'URUKIKO

[20] Rutegetse ko amasezerano y'ubwumvikane yabaye ku wa 03/06/2024, hagati ya Gaperi Elie, Uwimana Patricie, Kayitesi Claudine, Niyonsenga Augustin, Murenzi Jean Bosco, Musinguzi Kadurira Hannington n'Akarere ka Rwamagana, nk'uko agaragara mu gika cya 15, asoje urubanza N° RS/INJUST/RC 00007/2023/CA rwari mu Rukiko rw'Ubujurire kandi akaba agomba kubahirizwa.

[21] Ruvuze ko amafaranga y'amagarama y'urubanza aherera ku Isanduku ya Leta.