HABIYAMBERE v MANISHIMWE N'ABANDI

[Rwanda URUKIKO RUKURU– RCA 00044/2021/HC/MUS (Mukamuhire, P.J.) 28 Ugushyingo 2022]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Cyamunara – Gutesha agaciro cyamunara – Ibibazo birebana no guhagarika no gutesha agaciro cyamunara biri mu bubasha bw'Urukiko rw'Ibanze – Itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, z'umurimo n'iz'ubutegetsi, Ingingo ya 260

Incamake y'ikibazo: Uru rubanza rwatangiye Habiyambere arega umuhesha w'inkiko Nyirakadari Rukiriza mu Rukiko Rwisumbuye rwa Ruhengeri asaba gutesha agaciro cyamunara yakoresheje ku mutungo we mu kurangiza urubanza RC00042/016/TB/MUH rwaje kuvanwaho n'urubanza RS/INJUST/RC 00002/2019/HC/MUS rwemeje ko umutungo waburanwaga ari uwe.Urukiko rwemeje mu rubanza RC 00063/2020/TGI/MUS ko ikirego cye kitakiriwe ngo gisuzumwe mu mizi kuko cyaregewe urukiko rutabifitiye ububasha.

Habiyambere ntiyishimiye imikirize y'urubanza, arujuririra mu Rukiko Rukuru, urugereko rwa Musanze, avuga ko Urukiko Rwisumbuye rwanze kwakira ikirego cye ruvuga ko nta bubasha rufite nyamara ngo byaratewe nuko rutasomye imyanzuro ye neza, ngo iyo ruyisoma ruba rwarasanze rufite ububasha bwo kuburanisha ikirego cye. Yasabye Urukiko kuzasuzuma neza imyanzuro ye maze rukemeza ko urukiko Rwisumbuye ari rwo rufite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere kuko urukiko rwisumbuye ari rwo ruburanisha imanza zitahariwe iz'indi nkiko. Abaguze mu cyamunara Ndayambaje na Uwimana bagobotse mu rubanza bavuga ko Urukiko Rwisumbuye nta bubasha rwari rufite kandi ko baguze mu buryo bukurikije Amategeko bityo ko niba Habiyambere ashaka gusubirana uwo mutungo abasubiza agaciro kawo mu gihe bagezemo yongeyeho n'inyungu.

Urukiko Rukuru mu rubanza RCA00044/2021/HC/MUS rwemeje ko icyemezo cyafashwe n'urukiko rwisumbuye rwa Musanze, ko rudafite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere cyubahirije amategeko, kuko ibirego bijyanye no guharika no gutesha agaciro cyamunara biri mu bubasha bw'Urukiko rw'Ibanze.

Incamake y'ivyemezo: Ibibazo birebana no guhagarika no gutesha agaciro cyamunara biri mu bubasha bw'Urukiko rw'Ibanze. Bityo ntabwo byaregerwa mu Rukiko Rwisumbuye hashingiwe ko ibibazo bidafite aho biregerwa, biregerwa mu Rukiko Rwisumbuye kandi ibijyanye na cyamunara bisobanutse.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:
Itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, z'umurimo n'iz'ubutegetsi, Ingingo ya 111,260

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka kuri cyamunara yakozwe n'Umuhesha w'inkiko w'umwuga witwa Nyirakadari Rukiriza Pelagie wagurishije ubutaka bwa Habiyambere Faustin agira ngo aheshe Ntahonsigaye Asterie

amafaranga yamutsindiye mu rubanza RC00042/016/TB/MUH rwaciwe n'urukiko rw'Ibanze rwa Muhoza, kuwa 11/7/2017. Hanyuma uru rubanza rwaje gusubirishwamo ku mpamvu z'akarengane, mu rubanza RS/INJUST/RC 00002/2019/HC/MUS rwaciwe kuwa 19/7/2019, Urukiko rukuru, urugereko rwa Musanze, rwemeza ko urubanza RC00042/016/TB/MUH ruhindutse, rwemeza ko ubutaka n° 4911 Habiyambere Faustin yari yubatsemo inzu, yabuhawemo impano, akaba ari ubwe.

Habiyambere Faustin yahise atanga ikirego mu rukiko rwisumbuye rwa Musanze asaba ko cyamunara yavuzwe haruguru iteshwa agaciro. Urukiko rwemeje ko ikirego cye kitakiriwe ngo gisuzumwe mu mizi kuko cyatanzwe mu buryo butubahirije amategeko, kuko ikirego cyaregewe urukiko rutabifitiye ububasha.

[2] Habiyambere Faustin ntiyishimiye imikirize y'urubanza, arujuririra mu Rukiko Rukuru, urugereko rwa Musanze. Yavuze ko impamvu yajuriye ari ukubera ko urukiko rwisumbuye rwanze kwakira ikirego cye ruvuga ko nta bubasha rufite rwo kuruburanisha nyamara ngo nuko rutasomye imyanzuro ye neza, ngo iyo ruyisoma neza ruba rwarasanze rufite ububasha bwo kuburanisha ikirego cye. Yakomeje asaba urukiko kuzasuzuma neza imyanzuro ye maze rukemeza ko urukiko rwisumbuye ari rwo rufite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere kuko urukiko rwisumbuye ari rwo ruburanisha imanza zitahariwe iz'indi nkiko. Urukiko rero ntirwagombaga kwemeza ko ikirego cyaregewe urukiko rutabifitye ububasha.

[3] Uwimana Jean Baptiste, mu myanzuro yanditse yashyikirije urukiko yavuze ko we yaguze muri cyamunara ku buryo bukurikije amategeko, ko rero ubwo Habiyambere Faustin, umuzungura wa Ntahonsigaye Esther ashaka gusubirana umurima yaguze, agomba kumwishyura amafaranga yatanze hiyongeyeho n'agaciro ubutaka bugezeho ubu, ni ukuvuga igiciro yamuhaye ukubye kabiri.

[4] Ndayambaje Anastase yavuze ko Habiyambere Faustin yareze mu Rukiko rutabifitiye ububasha bityo ko Urukiko Rukuru, urugereko rwa Musanze rwakwemeza ko urubanza rwaciwe n'Urukiko Rwisumbuye rudahindutse. Ikindi kandi ngo yaguze muri cyamunara ku buryo bukurikije amategeko, ngo mu gihe byaba ngombwa ko Habiyambere Faustin asubizwa umurima yaguze kubera ko ari nawe muzungura wa Ntahonsigaye Esther ubwo ni nawe wazamusubiza ikiguzi yatanze ariko kigashyirwa ku gaciro ubutaka bugezeho ubu, bityo akazamuha ibihumbi magana arindwi mirongo itanu (750.000frw) kubera ko yabwongereye agaciro, ngo yashyizemo ifumbire kandi harimo n'imyaka yateyemo ihoraho.

[5] Me Uwamahoro N.Christine ahagarayiye abaregwa bose uretse Ntahonsigaye Esther, yasabye urukiko kuzashingira ku myanzuro barushyikirije maze rugafata icyemezo gikwiye. Yongeyeho ko abaregwa basaba 1.000.000Frws y'igihembo cya Avocat na 200.000Frws kuri buri wese mu baregwa, akaba 600.000Frws kuri bose, y'ikurikiranarubanza.

Urukiko rugiye gusuzuma ibibazo bikurikira:

Kumenya niba Urukiko Rwisumbuye rufite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere;

Kumenya niba indishyi zasabwe muri uru rubanza mu bujurire zifite ishingiro.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Kumenya niba urukiko Rwisumbuye rufite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere:

[6] Ingingo ya 260 y'itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Umuntu wese ubifitemo inyungu ashobora gusaba Urukiko rw'Ibanze rw'aho cyamunara igomba kubera kuyihagarika iyo:

1° hatubahirijwe amategeko agenga ishinganisha, ifatira n'itangazwa rya cyamunara;

2° umutungo ugomba kugurishwa udashobora kugurishwa kubera ubukene bwa nyirawo nk'uko biteganywa mu ngingo ya 259 y'iri tegeko;

3° hari ikimenyetso kidashidikanywaho kigaragaza ko umutungo ugiye kugurishwa atari uw'uryozwa kwishyura. Izi mpamvu ni nazo zishingirwaho mu kirego gisaba gutesha agaciro cyamunara yakozwe.

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Usaba gutesha agaciro cyamunara, ashobora no kurega umuhesha w'inkiko muri urwo rubanza, iyo hari ibyo ashaka kumuryoza. Ikirego gisaba gutesha agaciro cyamunara gitangwa mu gihe kitarenza iminsi cumi n'itanu (15) uhereye umunsi cyamunara yabereyeho. Ibirego bivugwa muri iyi ngingo bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa.

[7] Habiyambere Faustin ari imbere y'uru rukiko yavuze ko impamvu yatumye ajurira aruko urukiko Rwisumbuye rwa Musanze rwemeje ko nta bubasha rufite bwo kuburanisha uru rubanza ku rwego rwa mbere, nyamara ngo urukiko rwisumbuye nirwo rufite ububasha bwo kuburanisha imanza zose zitagenewe izindi nkiko, ko n'uru rero ruri mu bubasha bwarwo kuko nubwo yavuze ko ashingiye ikirego cye kuri iriya ngingo ya 260 yavuzwe haruguru, ariko ko ngo biriya biteganywa muri iriya ngingo bidahura n'ikirego cye kuko we impamvu ashaka ko cyamunara yatejwe iteshwa agaciro aruko urubanza rwari rwarashingiweho hatezwa cyamunara, urukiko rukuru, urugereko rwa Musanze, rwemeje ko ruhindutse.

[8] Mu myanzuro y'abaregwa Uwimana Jean Baptiste na Ndayambaje Anastase, bagaragaje ko ari bo baguze muri cyamunara ivugwa muri uru rubanza, basaba ko mu gihe cyamunara yavanwaho, Habiyambere yazabasubiza amafaranga yabo kandi yiyongereyeho n'agaciro kayo kugeza ubu kuko agaciro k'ifaranga kiyongereye, naho Me Uwamahoro N.Claudine ahagarariye abaregwa bose yasabye urukiko kuzasuzuma neza imyanzuro yabo maze rukemeza ko urukiko Rwisumbuye nta bubasha rufite rwo kuburanisha uru rubanza ku rwego rwa mbere.

[9] Mu gusesengura dosiye, urukiko rwasanze ku rwego rwa mbere, Habiyambere Faustin atanga ikirego yavuze ko atanze ikirego ashingiye ku ngingo ya 260 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kandi mu gusesengura iriya ngingo bigaragara ko ibirego byose byerekeye guhagarika no gutesha agaciro cyamunara biregerwa mu rukiko rw'Ibanze. Kuba Habiyambere avuga ko urubanza rwe rwabarirwa mu manza zitagenewe izindi nkiko, bityo rukaba ruri mu bubasha bw'urukiko Rwisumbuye si ukuri kuko ibyerekeye ibibazo bifitanye isano na cyamunara byo birasobanutse, biri mu bubasha bw'urukiko rw'Ibanze nk'uko biteganywa n'iriya ngingo ya 260 yavuzwe haruguru. Ikindi kandi nuko Habiyambere Faustin ubwe mu gutanga ikirego cye yavuze ko ashingiye kuri iriya ngingo ya 260 yavuzwe haruguru, akaba rero adakwiye gutanga ibisobanuro bivuguruzanya n'imyanzuro ye itanga ikirego ndetse na kamere y'ikirego cye.

[10] Hashingiwe ku bimaze kuvugwa haruguru byose, urukiko rurabona icyemezo cyafashwe n'urukiko rwisumbuye rwa Musanze, ko rudafite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere cyubahirije amategeko, kikaba rero kidahindutse.

Kumenya niba indishyi zasabwe muri uru rubanza mu bujurire zifite ishingiro:

[11] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko 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'i remezo.

[12] Me Uwamahoro N.Christine ahagarayiye Manishimwe, Ndayambaje Anastase na Uwimana Jean Baptiste, yasabye urukiko kuzashingira ku myanzuro barushyikirije maze rugafata icyemezo gikwiye. Yongeyeho ko abaregwa basaba 1.000.000Frws y'igihembo cya Avocat na 200.000Frws y'ikurikiranarubanza, kuri buri wese mu baregwa, yose hamwe akaba 600.000Frws.

[13] Habiyambere Faustin yasabye urukiko kuzasuzuma ibyerekeye indishyi zisabwe n'abaregwa maze rukazafata icyemezo, ngo icyo urukiko ruzemeza nicyo kizubahirizwa.

[14] Hashingiwe ku bimaze kuvugwa haruguru urukiko rurabona indishyi z'igihembo cya Avocat n'iz'ikurikiranarubanza zasabwe n'abaregwa zifite ishingiro ariko zikaba ari ikirenga, urukiko rukaba rugomba kuzibagenera mu bushishozi bwarwo, bityo abaregwa bose hamwe kuko bari bafite umwunganizi umwe bakaba bagenewe 500.000 Frws y'igihembo cya Avocat na 60.000 Frws y'ikurikiranarubanza.

[15] Habiyambere Faustin yasabye urukiko gutegeka Ntahonsigaye Esther wenyine kumuha 300.000Frws y'indishyi z'akababaro n'ikurikiranarubanza na 500.000Frws y'igihembo cya Avocat.

[16] Ntacyo Ntahonsigaye Esther yavuze ku ndishyi zasabwe na Habiyambere Faustin.

[17] Hashingiwe ku byavuzwe haruguru, aho urukiko rwemeje ko ubujurire bwa Habiyambere Faustin nta shingiro bufite, urukiko rurabona n'indishyi yasabye nta shingiro zikwiye guhabwa.

III. ICYEMEZO CY'URUKIKO

[18] Urukiko rwemeje ko ubujurire bwa Habiyambere Faustin nta shingiro bufite.

[19] Urukiko rwemeje ko urukiko Rwisumbuye rwa Musanze nta bubasha rufite bwo kuburanisha uru rubanza ku rwego rwa mbere.

[20] Urukiko rutegetse Habiyambere Faustin guha Uwimana Jean Baptiste, Manishimwe na Ndayambaje Anastase, bose hamwe, 500.000Frws y'igihembo cya Avocat na 60.000Frws y'ikurikiranarubanza.

[21] Urukiko rutegetse ko imikirize y'urubanza RC00063/2020/TGI/MUS rwaciwe n'urukiko Rwisumbuye rwa Musanze kuwa 09/6/2021, ihindutse ku byerekeye indishyi.

[22] Urukiko rutegetse ko ingwate y'amagarama yatanzwe na Habiyambere Faustin ajurira ihwanye n'imirimo yakozwe muri uru rubanza.