BINAMUNGU v. OFISI Y'IGIHUGU Y'AMAPOSITA (ONP)

[Rwanda URUKIKO RW'IKIRENGA – RDA 0042/13/CS (Mukamulisa, P.J., Mukandamage na Gatete G., J.) 10 Ukwakira 2014]

Amategeko agamije kurengera umutungo bwite mu by'ubwenge – Uburenganzira bw'umuhanzi – Imikoreshereze y'igihangano cyahererekanyijwe – Igihangano cy'umwimerere ni igikorwa kigaragaza uwagihanze mu bikigize no mu miterere yacyo cyangwa mu miterere yacyo gusa – Usibye ikimenyetso cyabivuguruza, nyiri igihangano ni umuntu wagaragaje izina rye cyangwa irihimbano kuri icyo gihangano ku buryo nta gushidikanya kuri uwo mwirondoro we – Umuhanzi w'igihangano afite uburenganzira bwihariye bwo gukora cyangwa kwemeza ko hakorwa igikorwa kimwe ku gihangano cyose cyangwa ku gice cyacyo nko kugituburamo kimwe cyangwa byinshi, kugikora mu bundi buryo cyangwa kugitangaza muri rubanda – Gutanga kopi imwe rukumbi cyangwa kopi nyinshi z'igihangano cy'umuhanzi ntibivuga ko uburenganzira bw'umuhanzi kuri icyo gihangano butanzwe – Itegeko nº 27/1983 ryo kuwa 15/11/1983 rishyiraho uburenganzira bw'umuhanzi, ingingo za 1, 9, 10, 34, 53 igika cya 3, n'iya 80.

Indishyi – Ikoreshwa ry'igihangano mu buryo butubahirije uburenganzira bw'umuhanzi – Igihembo cy'Avoka – Indishyi zituruka ku mikoreshereze inyuranyije n'amategeko y'igihangano zigenwa mu bushishozi bw'Urukiko – Umuburanyi wagombye gukomeza kwiyambaza umuburanira ku rwego rw'ubujurire ahabwa igihembo cy'avoka kuri urwo rwego – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamake y'ikibazo: Ofisi y'Igihugu y'amaposita (ONP) yatanze isoko ryo kuyikorera ibihangano byo gushyira ku matembure maze Binamungu Epaphrodite yitabira ipiganwa araritsinda kandi ibihangano bye bitanu ari byo patrimoine, Agaseke et sourires, Intore, les mains habiles na Danse mixte, aba aribyo bitsinda irushanwa. Binamungu yaje kurega ONP mu Rukiko Rukuru, avuga ko icyo kigo cyarakoresheje ibihangano bye mu buryo bunyuranyije n'amasezerano bagiranye kuko cyabitubuye, cyagiye kibicamo ibice ndetse kikanabihindura, maze abisabira indishyi zitandukanye zihwanye na 200,000,000Frw.

Urukiko Rukuru rwemeje ko ONP itsinzwe kuko yarengereye mu ikoreshwa ry'ibihangano bya Binamungu, rumugenera indishyi zihwanye na 5.000.000Frw kuberako ibihangano bye byatubuwe kandi bigakorwamo amakarita y'Iposita (cartes postales) nta burenganzira Binamungu abitangiye. Rwanamugeneye indishyi zihwanye na 10.000.000Frw zo kuba ibihangano bye byaragiye bicibwamo kabiri mu gihe byakorwagamo amakarita ndetse n'izina rye ntirigaragare, na 1.000.000Frw y'igihembo cy'Avoka.

Impande zombi ntizishimiye imikirize y'urubanza maze zijurira mu Rukiko rw'ikirenga, ONP ivuga ko Urukiko Rukuru rwumvise nabi ibikubiye mu masezerano yabaye hagati y'impande zombi kubera ko rutibajije ikibazo cy'ingenzi cyo kumenya imiterere y'uburenganzira bwa Binamungu ku bihangano yahaye ONP binyuze mu ipiganwa kuko bishingiye ku muco (folklore) Binamungu akaba adashobora kubyita ibye kandi ko indishyi zagenwe n'Urukiko Rukuru rutarubahirije ibivugwa mu Iteka rya Perezida rifite nº 276/14 ryo kuwa 6/5/1985, naho Binamungu we akavuga ko indishyi yagenewe ari nke. Yisobanura ku ngingo z'ubujurire za ONP avuga ko uburenganzira ku bihangano yahaye ONP bwareberwa ku kuba ari umwimerere we nk'uko bitegenywa n'ingingo ya 1 y'itegeko ryo kuwa 15/11/1983 rishyiraho uburenganzira bw'umuhanzi.

Incamake y'icyemezo: 1. Igihangano cy'umwimerere ni igikorwa kigaragaza uwagihanze mu bikigize no mu miterere yacyo cyangwa mu miterere yacyo gusa.

2. Usibye ikimenyetso cyabivuguruza, nyiri igihangano ni umuntu wagaragaje izina rye cyangwa irihimbano kuri icyo gihangano ku buryo nta gushidikanya kuri uwo mwirondoro we.

3. Umuhanzi w'igihangano afite uburenganzira bwihariye bwo gukora cyangwa kwemeza ko hakorwa igikorwa kimwe ku gihangano cyose cyangwa ku gice cyacyo: kugituburamo kimwe cyangwa byinshi, kugikora mu bundi buryo cyangwa kugitangaza muri rubanda.

4. Gutanga kopi imwe rukumbi cyangwa kopi nyinshi z'igihangano cy'umuhanzi ntibivuga ko uburenganzira bw'umuhanzi kuri icyo gihangano butanzwe.

5. Indishyi zituruka ku mikoreshereze inyuranyije n'amategeko y'igihangano zigenwa mu bushishozi bw'Urukiko kandi izagenwe n'Urukiko Rukuru ziri mu kigero gikwiye.

6. Ku mafaranga y'igihembo cya Avoka asabwa na Binamungu kuri uru rwego, Urukiko rusanga ONP igomba kuyamuha kuko byagaragaye ko yagombye gukomeza kwiyambaza umuburanira kuri uru rwego. Ariko kubera ko ayo asaba ari ikirenga, mu bushishozi bw'urukiko, akwiye guhabwa 500.000 Frw yiyongera kuri 1.000.000Frw yagenewe n'Urukiko Rukuru.

Ubujurire bwa Ofisi y'Igihugu y'Amaposita nta shingiro bufite.
Ubujurire bwa Binamungu bufite ishingiro.
Amagarama y'urubanza aherereye kuri Ofisi y'Igihugu y'Amaposita.

Amategeko yashingiweho:
Itegeko nº 27/1983 ryo kuwa 15/11/1983 rishyiraho uburenganzira bw'umuhanzi, ingingo za 1, 34, 9, 53 igika cya 3, 10 na 80.
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Binamungu Epaphrodite yitabiriye ipiganwa ryatanzwe na Ofisi y'Igihugu y'amaposita (ONP) ryo kuyikorera amatembure, ibihangano bye bitanu, ari byo patrimoine, Agaseke et sourires, Intore, les mains habiles na Danse mixte, biratsinda. Nyuma Binamungu yareze ONP mu Rukiko Rukuru, avuga ko yatangajwe no kubona icyo kigo cyarakoresheje ibihangano bye mu buryo bunyuranye n'ibyo bari barumvikanye, irabitubura ndetse igenda ibicamo ibice iranabihindura, ari yo mpamvu yasabye guhabwa indishyi zitandukanye zihwanye na 200,000,000Frw.

[2] Mu guca urubanza, Urukiko Rukuru rwemeje ko ONP itsinzwe kuko yarengereye mu ikoreshwa ry'ibihangano bya Binamungu. Rwageneye Binamungu indishyi zihwanye na 5.000.000Frw zo kuba ibihangano bye byaratubuwe, bigakorwamo amakarita y'Iposita (cartes postales) nta burenganzira Binamungu abitangiye. Rwanamugeneye indishyi

zihwanye na 10.000.000Frw zo kuba ibihangano bye byaragiye bicibwamo kabiri mu gihe byakorwagamo amakarita ndetse n'izina rye ntirigaragare, na 1.000.000Frw y'igihembo cy'Avoka.

[3] Impande zombi ntizishimiye imikirize y'urubanza maze zijuririra mu Rukiko rw'Ikirenga, zinatanga imyanzuro ikubiyemo impamvu z'ubujurire.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 09/09/2014, Ofisi y'Igihugu y'Amaposita (ONP) iburanirwa na Me Ndagijimana Emmanuel, Binamungu Epaphrodite aburanirwa na Me Bundogo Innocent.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

a) Kumenya niba Binamungu nta burenganzira yari afite ku bihangano yakoze apiganwa mu irushanwa ryakoreshejwe na ONP.

[5] Me Ndagijimana Emmanuel uburanira Ofisi y'Igihugu y'Amaposita (ONP) avuga ko Urukiko Rukuru rwumvise nabi ibikubiye mu masezerano yabaye hagati y'impande zombi kubera ko rutibajije ikibazo cy'ingenzi cyo kumenya imiterere y'uburenganzira bwa Binamungu ku bihangano yahaye ONP binyuze mu ipiganwa. Anasanga Urukiko rutarasesenguye neza ibikubiye mu ngingo ya 9, igika cya nyuma n'iya 53 z'Itegeko nº 27/1983 ryo kuwa 15/11/1983 rishyiraho uburenganzira bw'umuhanzi[1] ngo rubone ko Binamungu adashobora kwiyitirira ibihangano avuga kuko bishingiye ku muco (oeuvres folkloriques), akaba nta burenganzira abifiteho.

[6] Muri urwo rwego akomeza atanga urugero avuga ko nta muhanzi wakwiyitirira Intore ngo avuge ko ari igihangano cye bwite, kubera ko bisanzwe bizwi ko Intore ari kimwe mu biranga umuco nyarwanda (folklore) kandi ahubwo Itegeko nº 27/1983 ryavuzwe rikaba rirengera umuco muri rusange ku buryo umuntu ukoresha mu nyungu ze ibihangano bishingiye ku muco yabihanirwa n'ingingo ya 78 y'iryo tegeko.

[7] Me Bundogo uburanira Binamungu asubiza ko ibyo uburanira ONP avuga nta shingiro bifite, kubera ko mu gusuzuma niba Binamungu afite uburenganzira ku bihangano bye, hagomba gushingirwa ku ngingo ya 1 y'Itegeko nº 27/1983 ryavuzwe, ivuga ko igihangano cy'umwimerere ari igihangano gituma uwagihimbye amenyekana bitewe n'ibikigize n'uko yagikoze (éléments caractéristiques et forme) cyangwa bitewe gusa n'uko gikoze (forme). Akavuga rero ko hagomba kurebwa nyiri ibihangano uwo ari we, kandi ko nta gushidikanya ko ari Binamungu kuko ari umwimerere we akaba ari nawe wabihimbye mu buryo buteganywa n'Itegeko nº 27/1983 ryamaze kuvugwa cyane cyane ko n'izina rye ribigaragaraho, kubera iyo mpamvu akaba ari nta wundi ushobora kubyiyitirira.

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[1] Ingingo ya 9 y'iryo tegeko igaragaza urutonde rw'uburenganzira bwihariye bunyuranye bw'umuhanzi, naho igika cya nyuma cy'iyo ngingo kikavuga gitya: "…gutanga ku buryo bwuzuye igihangano gikomoka ku bihangano karande, kugitanga igice cyangwa gutanga uburenganzira bwihariye kuri icyo gihangano byemerwa ari uko urwego rw'ubutegetsi rwita ku burenganzira bw'umuhanzi rubitangiye uruhushya".
Mu byo ingingo ya 53 y'itegeko rimaze kuvugwa ivuga, harimo ko: "….iyo habayeho ugushidikanya ku burenganzira buvugwa mu ngingo ya 9, bwatanzwe igice cyangwa bwose, mu gukemura impaka bibanda gusa ku ngingo zanditse muri ayo masezerano, ziteganya imikoreshereze yayo. Ibitagaragara mu mu masezerano y'umuhanzi ko yabitanze bikomeza kuba ibye. Gutanga kopi imwe rukumbi cyangwa kopi nyinshi z'igihangano cy'umuhanzi ntibivuga ko uburenganzira bw'umuhanzi kuri icyo gihangano butanzwe. …".

[8] Yongeraho ko ibivugwa na ONP ko Urukiko Rukuru rwumvise nabi ingingo ya 9 y'Itegeko nº 27/1983 ryavuzwe atari ukuri, bitewe n'uko iyo ngingo isobanutse neza kuko ivuga ko nyiri igihangano afite uburenganzira bwo kwanga ko igihangano cye bagitubura, bagihindura, bagisubiramo cyangwa bakagikoresha mu bundi buryo bwose bwo guhindura igihangano, ndetse ko ari byo Binamungu yanze kubera ko yabonaga ko ONP yahinduye ikanatubura ibihangano bye ibikoresha mu buryo yishakiye nyamara batabyumvikanyeho.

[9] Ku bijyanye n'ingingo ya 53 y'Itegeko nº 27/1983 uburanira ONP avuga ko Urukiko rwumvise nabi, Me Bundogo asubiza ko iyo ngingo nayo isobanutse neza kuko ivuga ko gukemura impaka bibanda gusa ku ngingo zanditse mu masezerano y'umuhanzi ko ateganya imikoreshereze y'igihangano, ariko ko ibitagaragara muri ayo masezerano ko umuhanzi yabitanze, bikomeza kuba ibye.

[10] Akomeza avuga ko ibijyanye n'uburenganzira bw'umuhanzi byanasobanuwe mu rubanza RCOMA 0014/08/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 06/08/2010, hagati y'umuhanzi Bushayija Pascal na COGEBANQUE S.A aho uwo muhanzi yareze avuga ko iyo banki yakoresheje ibihangano bye ku ma sheki yayo atayibihereye uburenganzira, Urukiko rwemeza ko ibyo avuga ari ukuri.

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[11] Ingingo ya 1 y'Itegeko nº 27/1983 ivuga itya: "Abahanzi b'ibihangano by'umwimerere mu bwanditsi, mu bugeni no mu bumenyi, babifitiye uburenganzira butangwa n'ingingo z'iri tegeko". Ikomeza ivuga itya kandi: „Igihangano cy'umwimerere ni igikorwa kigaragaza uwagihanze mu bikigize no mu miterere yacyo cyangwa mu miterere yacyo gusa".

[12] Ingingo ya 34 y'iryo tegeko n° 27/1983 yo ivuga ko usibye ikimenyetso cyabivuguruza, nyiri igihangano ari umuntu wagaragaje izina rye cyangwa irihimbano kuri icyo gihangano ku buryo nta gushidikanya kuri uwo mwirondoro we.

[13] Nanone kandi ingingo ya 9 y'Itegeko ryavuzwe haruguru ivuga ko umuhanzi w'igihangano giteganywa n'iri tegeko afite uburenganzira bwihariye bwo gukora cyangwa kwemeza ko hakorwa igikorwa kimwe ku gihangano cyose cyangwa ku gice cyacyo: kugituburamo kimwe cyangwa byinshi, kugikora mu bundi buryo cyangwa kugitangaza muri rubanda. Naho ingingo ya 53 y'iryo tegeko, mu gika cya 3 yo ikavuga itya: „Gutanga kopi imwe rukumbi cyangwa kopi nyinshi z'igihangano cy'umuhanzi ntibivuga ko uburenganzira bw'umuhanzi kuri icyo gihangano butanzwe".

[14] Mu itangazo rya ONP rihamagarira ipiganwa ryo gushushanya amatembure y'iposita, icyo kigo cyahamagariraga abanyabugeni babyifuza kandi babifitiye ubushobozi gushushanya amatembure ku nsanganyamatsiko zikurikira: Imikino olimpiki ya Beijing, Uduseke tw'i Rwanda, Umuco nyarwanda (kubyina, gutaka)....By'umwihariko ku bijyanye n'umuco nyarwanda, ONP ikaba yarasobanuye muri iryo tangazo ko abanyabugeni bazashushanya ku bintu bitandukanye bigaragaza umuco nyarwanda mu mbyino zinyuranye no gutaka.

[15] Kuba rero Binamungu yaritabiriye iryo rushanwa maze ku bijyanye n'umuco nyarwanda, agashushanya ibihangano akanabishyiraho izina rye, bigashimwa na ONP yanabishyize ku matembure yayo, ntibikuraho inganzo y'umwimerere (originalité)

yabikoranye nk'uko ingingo ya 1 y'Itegeko nº y'Itegeko nº 27/1983 ryavuzwe ibisobanura, kuko ahubwo uwo mwimerere n'ubwenge yabikoranye ari byo byatumye ibihangano bye ari byo bitsinda ipiganwa.

[16] Urukiko rushingiye kuri ibyo bisobanuro, rusanga imvugo y'uburanira ONP y'uko Binamungu adakwiye kwiyitirira ibihangano bijyanye n'umuco nta shingiro ifite, mu gihe byagaragajwe ko Binamungu afite uburenganzira kuri ibyo bihangano kandi bukaba burengerwa n'itegeko mu buryo bunyuranye nk'uko byavuzwe.

[17] Byongeye kandi, Urukiko rurasanga nk'uko Urukiko Rukuru rwabyemeje, mu gihe ONP idahakana ko Binamungu yayishyikirije ibihangano yakoze ashingiye ku itangazo ry'ipiganwa ONP yari yatanze, ikanerekana uko yifuza ko ibyo bihangano bigomba kuba biteye, itahindukira ngo ivuge ko ibyo Binamungu yakoze atabyiyitirira cyangwa ko nta burenganzira abifiteho.

b) Ku bijyanye no kumenya niba ONP yarakoresheje ibihangano Binamungu yayihaye mu buryo butubahirije uburenganzira bw'umuhanzi.

[18] Me Ndagijimana avuga ko ONP itarengereye mu ikoreshwa ry'ibihangano byakozwe na Binamungu kuko itabicuruje, ahubwo ko yabikoresheje gusa ku makarita y'iposita mu rwego rwo kwamamaza umuco nyarwanda, ndetse ko yabyerekanye mu imurika rimwe ryabaye, bikaba bitandukanye no kubitubura ugamije kubicuruza.

[19] Anavuga ko Urukiko Rukuru rutagombaga gushingira ku rubanza RCOMA 0014/08/CS rwaciwe n'uru Rukiko kuwa 06/08/2010 hagati ya COGEBANQUE na Bushayija kuko rutandukanye n'uru rubanza, cyane cyane ko muri urwo rundi, COGEBANQUE yakoresheje ibihangano mu bucuruzi, mu gihe bizwi ko Iposita yo idacuruza, n'ubwoko bw'ibihangano muri izo manza bukaba atari bumwe.

[20] Me Ndagijimana yongeraho ko kubera ingano y'ibihangano Binamungu yashyikirije bitashobotse kubishyira uko byakabaye ku ikarita y'iposita nk'uko byagenze ku ma timbure, ari yo mpamvu ONP yashyizeho igice cyabyo, ariko ko ibyo bitafatwa nko guhindura igihangano.

[21] Me Bundogo avuga ko ONP yatubuye ibihangano bya Binamungu ibikoramo amakarita y'iposita, ndetse ibicamo n'ibice kuko ku ma timbure bigaragara byose nk'uko yabihanze, ariko ku makarita y'iposita (cartes postales) ibihangano bye bikaba bitagaragara uko byakabaye. Anavuga ndetse ko usibye no kubihindura, ONP itanagaragaje izina rye kuri izo „cartes postales".

[22] Mu bujurire bwe kandi uburanira Binamungu anenga Urukiko kuba rwaravuze ko ONP itahinduye ibihangano bye ibikoramo amakarita (cartes postales) igamije kuyacuruza ngo kubera ko idacuruza, rwemeza ko ahubwo icyo kigo cyari kigamije kwamamaza umuco, agasanga ibyo binyuranye n'ukuri kubera ko Binamungu yarugaragarije ibimenyetso birimo fagitire zitandukanye zirimo n'izatanzwe n'abacuruzi bikorera ku giti cyabo.

[23] Anavuga ko usibye n'ibyo bimenyetso bivuzwe, yerekanye ko no mu kiganiro (gikubiye mu nyandiko "extrait" yashyikirije Urukiko) Umuyobozi wa ONP ushinzwe ibikorwa by'ubucuruzi witwa Maniraguha Bisengimana Dieudonné yagiranye n'itangazamakuru, yasobanuye ko ONP ikora ubucuruzi. Agasanga rero ntaho ONP yahera ivuga ko idakora ubucuruzi, kandi ko nta kosa Urukiko Rukuru rwakoze rushingira ku

rubanza rwavuzwe RCOMA 0014/08/CS rwaciwe n'uru Rukiko kuwa 06/08/2010 hagati ya COGEBANQUE na Bushayija kuko rufitanye isano n'uru.

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[24] Ingingo ya 9 y'itegeko nº 27/1983 yavuzwe haruguru, ivuga ku burenganzira bwihariye bwo gukora cyangwa kwemeza ko hakorwa igikorwa kimwe ku gihangano cyose cyangwa ku gice cyacyo: kugituburamo kimwe cyangwa byinshi, kugikora mu bundi buryo cyangwa kugitangaza muri rubanda.

[25] Ingingo ya 10 y'iryo tegeko yo ivuga ko nta muntu ushobora gukora kimwe mu bikorwa bivugwa mu ngingo ya 9 imaze kuvugwa atabiherewe uruhushya rwemewe kandi rwanditse rutangwa na nyirabyo cyangwa abamusimbura rwashyizweho umukono na noteri cyangwa undi mutegetsi ubifitiye ububasha.

[26] Urukiko rurasanga hashingiwe ku ngingo z'amategeko zagaragajwe, icy'igenzi kigomba gusuzumwa ari ukumenya niba ONP yarakoresheje ibihangano Binamungu yahaye icyo kigo ku byo bari bumvikanyeho byonyine.

[27] Urukiko rusanga mu gihe mu itangazo rya ONP ryasobanuye neza ko "rihamagarira ipiganwa ryo gushushanya amatembure y'Iposita", nyamara ikaba idahakana ko usibye gukoresha ibihangano bya Binamungu ku matembure nk'uko bari babyumvikanye, yanarenzeho ikabikoresha ku makarita yayo (cartes postales). Bikaba rero bigaragaza ko ONP itubahirije ibyo yari yumvikanye na Binamungu ku ikoreshwa ry'ibihangano bye.

[28] Ku bijyanye n'uko ONP yakoresheje ibihangano bya Binamungu, nk'uko n'Urukiko Rukuru rwabisobanuye, uru Rukiko narwo rusanga ibyo bihangano bitarashyizwe ku makarita y'iposita uko byakabaye, ndetse ko bitanagizwe bito gusa nk'uko ONP ibivuga, ahubwo byaraciwemo kabiri kandi n'izina rye ntiryagaragara, kubera ibyo byose rero, hatitawe kureba urwego ONP yabikozemo, akaba ari nta gushidikanya ko yarengereye mu ikoreshwa ry'ibyo bihangano.

c) Ku bijyanye n'indishyi zinyuranye zatanzwe n'izasabwe kuri uru rwego:

1. Indishyi zo kuba ONP yaratubuye ikanakoresha ibihangano bya Binamungu mu bucuruzi.

[29] Me Bundogo avuga ko Binamungu asaba ko yahabwa indishyi zihwanye na 150.000.000Frw (ni ukuvuga 30.000.000Frw x ibihangano 5) zijyanye no kuba ONP yarakoresheje ibihangano bye mu bucuruzi bwayo. Anasaba ko indishyi Binamungu yagenewe zijyanye no kuba ibihangano bye byaratubuwe ziyongera, maze agahabwa izingana na 4.000.000Frw x ibihangano 5, zihwanye na 20.000.000Frw.

[30] Me Ndagijimana avuga ko ONP idacuruza, ko ndetse itigeze icuruza amakarita ariho ibihangano bya Binamungu, ahubwo ko yabigaragaje gusa rimwe mu imurika ryabaye mu rwego rwo kwamamaza umuco nyarwanda, ari nawo wari mu bihangano Binamungu avuga ko yahanze. Anasanga mu kugenera Binamungu indishyi, Urukiko Rukuru rutarubahirije ibivugwa mu Iteka rya Perezida rifite nº 276/14 ryo kuwa 6/5/1985.

[31] Me Bundongo yongeraho ko iryo Teka nº 276/14 rishyiraho inyishyu n'uburyo bwo gukurikirana indishyi nk'uko bigenwa mu ngingo ya 11 kugeza kuya 14 z'itegeko nº

27/1983, ko ariko izo ngingo zivuga ku byerekeranye n'inyungu abahanzi babona ku bihangano byabo igihe byagurishijwe cyangwa byatejwe cyamunara kandi impande zombi zabanje kubyumvikanaho, nyamara bikaba ntaho bihuriye n'uko ONP yakoresheje ibihangano bya Binamungu batabyumvikanye.

UKO URUKIKO RUBIBONA

[32] Urukiko rurasanga nk'uko Urukiko Rukuru rwabyemeje, nta kigaragaza ko ONP yacuruje ibihangano bya Binamungu mu buryo busanzwe bw'uburucuzi cyane cyane ko Binamungu atashoboye kugaragaza umubare w'ibyaba byaracurujwe n'inyungu ONP yakuyemo, icyo ONP yaryoza ahubwo ni uko yahinduye ibihangano bye mu buryo batari bumvikanye nk'uko byavuzwe haruguru.

[33] Ku bijyanye no kuba ONP yaratubuye ibihangano bya Binamungu batabyumvikanye, nkuko byasobanuwe haruguru, ONP yararengereye ikoresha ibihangano bya Binamungu mu buryo bunyuranyije n'icyo byari bigenewe ndetse ntiyubahiriza itegeko rirengera uburenganzira bw'umuhanzi kubera ko itabigaragaje uko biri, akaba ari nta gushidikanya ko ibikorwa bya ONP byabangamiye uburenganzira bwa Binamungu nk'umuhanzi.

[34] Icyakora ku bijyanye n'ingano z'indishyi, nkuko byemejwe mu rubanza RCOMA 0014/08/CS rwabaye hagati ya Bushayija Pascal na COGEBANQUE S.A, rwavuzwe haruguru, hanashingiwe ku ngingo ya 80 y'itegeko n° 27/1983 ryavuzwe haruguru, ivuga ko imanza z'amahugu zivuka mu iyubahirizwa ry'uburenganzira bw'umuhanzi zicibwa nk'imanza z'amahugu zisanzwe, mu kugena indishyi Urukiko rugomba gushingira ku ngingo ya 258 y'Igitabo cya gatatu cy'amategeko mbonezamubano iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse.

[35] Urukiko rurasanga indishyi zo kuba ONP yaratubuye ikanagurisha amakarita y'iposita zidakwiye gutandukanywa muri uru rubanza, kuko ibyo bikorwa byombi bifitanye isano n'uko ONP isanzwe icuruza amakarita nk'uko yabisobanuye mu ibaruwa yayo iri muri dosiye yo kuwa 14/09/2011 yasubizaga iyo uwunganira Binamungu yari yayandikiye.

[36] Na none ku bijyanye n'igenwa ry'indishyi, Urukiko rusanga uburanira ONP atagaragaza uburyo Iteka rya Perezida nº 274/14 ryo kuwa 6/5/1985 ritubahirijwe, uretse n'uko iryo Iteka ritashingirwaho mu gihe ibihangano byanakoreshejwe no ku buryo itumvikanye na Binamungu.

[37] Hakurikijwe rero ibisobanuro byatanzwe, Urukiko rusanga indishyi zigomba kugenwa mu bushishozi bw'urukiko, akaba ari yo mpamvu izo Binamungu yagenewe n'Urukiko Rukuru mu bushishozi bwarwo zingana na 5.000.000Frw ziri mu kigero gikwiye.

2. Indishyi zijyanye no kuba ONP yaraciyemo ibice ibihangano bya Binamungu.

[38] Me Bundogo avuga ko indishyi Binamungu yagenewe zihwanye na 10.000.000Frw zijyanye no kuba ONP yaragiye icamo ibihangano bye mo kabiri maze igafata ibice byabyo akaba ari byo ishyira ku ma „cartes postales", n'izina rye ritagaragazwe, nazo ari nke kuko ibyo ONP yakoze byatumye atakaza icyizere yari afitiwe n'abafatabuguzi be bari basanzwe bamuzi nk'icyamamare mu gihugu no hanze, bituma agira igihombo gikabije. Kubera izo mpamvu asaba Urukiko ko yahabwa indishyi zingana na 6.000.000Frw kuri buri gihangano X ibihangano 5, zihwanye na 30.000.000Frw ku bihangano byose.

[39] Me Ndagijimana avuga ko nta ndishyi Binamungu akwiye ndetse ko n'izo yagenewe n'Urukiko Rukuru zitari zikwiye kuko atabasha kugaragaza ingaruka mbi yagiriwe mu ikoreshwa ry'ibihangano avuga, cyangwa se ngo yerekane igihombo yagize, ngo abe ari byo Urukiko ruheraho rumugenera indishyi rwamugeneye mu bushishozi bwarwo.

UKO URUKIKO RUBIBONA

[40] Nkuko Urukiko Rukuru rwabisobanuye, nta gushidikanya ko ONP yakoze ikosa icamo ibihangano bya Binamungu batabyumvikanyeho kandi binyuranyije n'itegeko. Icyakora, uburanira Binamungu ntiyabashije kugaragariza Urukiko igihombo kijyanye no kuba yaratakaje icyizere abafatabuguzi bari basanzwe bamufitiye ngo Urukiko rubihereho rugena izo ndishyi, ariyo mpamvu n'ubwo akwiye indishyi, zigomba kugenwa mu bushishozi bw'urukiko, muri urwo rwego uru Rukiko rukaba rusanga izo yagenewe n'Urukiko Rukuru zihwanye na 10.000.000Frw ziri mu kigereo gikwiye.

c. Ku bijyanye n'igihembo cya Avoka

[41] Ku mafaranga y'igihembo cya Avoka Binamungu yagenewe, Me Ndagijimana anenga Urukiko Rukuru ko rwamugeneye 1.000.000Frw kandi ntayo yari yasabye. Anasaba Urukiko ko nirusanga ubujurire bwa ONP bufite ishingiro, rwazayigenera 2.000.000Frw y'igihembo cya Avoka.

[42] Me Bundogo asubiza ko amafaranga Binamungu yagenewe yari yayasabye, ko rero nta kosa Urukiko rwakoze. Anavuga ko ONP nta mafaranga ya Avoka ikwiye kuko ariyo yakoze amakosa. Akomeza ahubwo asaba ko Binamungu yagenerwa amafaranga y'igihembo cya Avoka n'ikurikiranarubanza angana na 1.500.000 yiyongera kuyo yagenewe n'Urukiko Rukuru.

UKO URUKIKO RUBIBONA

[43] Urukiko rusanga Binamungu yaraje mu manza kubera amakosa ya ONP, kandi bigaragara ko mu mwanzuro w'umwunganira mu Rukiko Rukuru, yasabye 1.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, Urukiko Rukuru rukaba rero nta kosa rwakoze rumugenera amafaranga y'igihembo cya Avoka.

[44] Ku mafaranga y'igihembo cya Avoka asabwa na Binamungu kuri uru rwego, Urukiko rusanga ONP igomba kuyamuha kuko byagaragaye ko yagombye gukomeza kwiyambaza umuburanira kuri uru rwego. Ariko kubera ko ayo asaba ari ikirenga, mu bushishozi bw'urukiko, akwiye guhabwa 500.000Frw yiyongera kuri 1.000.000Frw yagenewe n'Urukiko Rukuru, amafaranga y'igihembo cya Avoka ku nzego zombi ONP igomba guha Binamungu akaba ahwanye na 1.500.000 Frw.

III. ICYEMEZO CY'URUKIKO

[45] Rwemeje ko ubujurire bwa Ofisi y'Igihugu y'Amaposita (ONP) nta shingiro bufite.

[46] Rwemeje ko ubujurire bwa Binamungu Epaphrodite bufite ishingiro kuri bimwe.

[47] Ruvuze ko imikirize y'urubanza RAD 0106/12/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 03/05/2013, ihindutse gusa ku byerekeye amafaranga y'igihembo cya Avoka ONP igomba guha Binamungu Epaphrodite.

[48] Rutegetse Ofisi y'Igihugu y'Amaposita guha Binamungu indishyi yagenewe n'Urukiko Rukuru zingana na 15.000.000Frw na 1.000.000Frw y'igihembo cya Avoka, hamwe na 500.000Frw y'igihembo cya Avoka kuri uru rwego, amafaranga yose hamwe ONP igomba kumuha akaba angana na 16.500.000Frw.

[49] Rutegetse Ofisi y'Igihugu y'Amaposita gutanga amagarama y'uru rubanza.