ARPEQ v. SEGATABAZI (2)

[Rwanda URUKIKO RW'IKIRENGA – RC 0004/13/CS (Kayitesi Z., P.J., Mugenzi na Hitiyaremye, J.) 10 Mutarama 2014]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ikirego cyihutirwa – Irangizarubanza ry'agateganyo – Guhagarika irangizarubanza ry'agateganyo – Irangizwa ry'agateganyo ryemezwa n'Urukiko rubyibwirije ndetse nta ngwate, iyo ikimenyetso cy'ikiburanwa ari inyandiko mvaho cyangwa ikiburanwa ari umwenda wemewe mu rubanza n'uregwa – Irangizarubanza ry'agateganyo ntabwo byanze bikunze rikorwa ku rubanza rwose – Impamvu urega ashingiraho asaba ko irangizarubanza ry'agateganyo ryahagarikwa kubera ko rifite icyo rimuhombya igomba gusuzumwa hanazirikanwa n'ibyakwangirika n'igihombo uregwa agaragaza ko byaterwa no kudashyira mu bikorwa ibyo yatsindiye – Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 212(2), iya 213 n'iya 214.

Incamake y'ikibazo: Nyuma y'aho Segatabazi aregeye ARPEQ mu Rukiko Rwisumbuye rwa Gasabo asaba ko yamwishyura 150.000.000Frw ukubiyemo 48.693.694Frw y'inguzanyo, 44.352.822Frw y'imisanzu yatanze muri ARPEQ na 56.953.484Frw y'ishimwe yemerewe na ARPEQ hiyongereyeho inyungu zayo, indishyi z'ikurikiranarubanza n'igihembo cy'Avoka; Urukiko rugasanga ikirego cya Segatabazi gifite ishingiro kuri bimwe maze rukayitegeka kumwishyura 105.648.178Frw zihwanye n'igiteranyo cy'inguzanyo ya 48.693.694Frw na 56.953.484Frw y'ishimwe yamwemereye; impande zombi zajuririye icyo cyemezo mu Rukiko Rukuru, maze uru Rukiko rwo rwemeza ko Segatabazi atsindiye 150.000.000Frw ndetse runategeka irangizarubanza ry'agateganyo ku mafaranga angana na 48.693.484Frw.

ARPEQ yajuririye iki cyemezo mu Rukiko rw'Ikirenga ivuga ko urubanza rutahawe uburemere rukwiriye mu Rukiko Rukuru kandi ko Uru Rukiko rwitiranyije ARPEQ n'ibigo biharanira inyungu kandi yo ari umushinga udaharanira inyungu. Hagati aho kuwa 14/11/2013, Umuhesha w'Inkiko w'Umwuga yatangiye imihango y'irangizarubanza ku birebana n'icyemezo cy'urukiko Rukuru gitegeka irangizarubanza ry'agateganyo maze amenyesha ARPEQ ko ayihaye iminsi 3 yo kurangiza urubanza nk'uko byategetswe n'Urukiko Rukuru bitaba bityo imitungo yayo igafatirwa.

Mu gihe urubanza rutaraburanishwa mu Rukiko rw'Ikirenga, ARPEQ yatanze ikirego cyihutirwa gishamikiye ku bujurire bwayo, isaba ko rwahagarika irangizarubanza ry'agateganyo ryategetswe n'Urukiko Rukuru kugeza igihe urubanza rw'ubujurire ruzaburanishirizwa mu Rukiko rw'Ikirenga ivuga ko umucamanza yibwirije agategeka irangizarubanza ry'agateganyo ndetse ko icyemezo cy'urukiko cyatandukiriye kigacamo umwenda ibice mu gihe urega yishyurizaga hamwe umwenda wa 150.000.000Frw, ibyo rero ngo bikaba binyuranije n'ibikubiye mu ngingo ya 4, iya 7 n'iya 19 z'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

Segatabazi n'abamwunganira bavuga ko icyemezo cy'Urukiko Rukuru nta nenge gifite kubera ko umwenda wa 48.693.694Frw ARPEQ yawemeye, bityo iyi mpamvu ikaba idakwiye guhabwa agaciro kubera ko nta naho ihuriye n'impamvu zihagarika irangizarubanza ziteganyijwe mu ingingo ya 214 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru.

Incamake y'icyemezo: 1. Irangizwa ry'agateganyo ryemezwa n'Urukiko rubyibwirije ndetse nta ngwate, iyo ikimenyetso cy'ikiburanwa ari inyandiko mvaho n'iyo ikiburanwa ari umwenda wemewe mu rubanza n'uregwa.

2. Nta gutandukira kwabayeho Urukiko Rukuru rwemeza irangizarubanza ry'agateganyo kuri 48.693.694Frw kuko irangizarubanza ry'agateganyo ryabaye ku gice cy'umwenda urega yiyemerera, ikindi kandi, ntakibuza ko irangizarubanza ryakorwa ku gice cy'umwenda.

3. N'iyo ARPEQ yaba ifite konti imwe yonyine kandi yari itezeho inguzanyo yatse banki sibyo byahabwa ishingiro nk'impamvu yo guhagarika irangizarubanza ry'agateganyo cyane ko izo mpamvu ARPEQ itanga zigomba gusuzumwa hazirikanwa ko na Segatabazi avuga ko yafashe imyenda muri banki yananiwe kwishyura ku buryo imitungo ye ishobora gutezwa cyamunara igihe icyo aricyo cyose, kandi niba ARPEQ ifite ibyangirika n'ibyo ihomba, n'uwo ifitiye umwenda afite ibyo ahomba nibyangirika, bityo ibyo ARPEQ ivuga bikaba bitahabwa ishingiro.

Ikirego nta shingiro gifite.
Amagarama aherereye ku rega.

Amategeko yashingiweho:
Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 212(2), iya 213 n'iya 214.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA MURI MAKE

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo Segatabazi Protais arega ARPEQ umwenda ungana na 150.000.000Frw (ugizwe na 48.693.694Frw yagurije ARPEQ, 44.352.822Frw y'imisanzu yatanze muri ARPEQ na 56.953.484Frw y'ishimwe yemerewe na ARPEQ) hiyongereyeho inyungu zayo mafaranga yose zibariwe kuri 18% kugeza yishyuwe, indishyi z'ikurikiranarubanza zingana na 5.000.000Frw n'igihembo cya Avoka kingana na 7.500.000Frw. Urukiko rwasanze ikirego cya Segatabazi gifite ishingiro kuri bimwe, rutegeka ARPEQ kumwishyura 48.693.694Frw yayigurije na 56.953.484Frw y'ishimwe yamwemereye yose hamwe akaba 105.648.178Frw.

[2] Impande zombi zajuririye icyo cyemezo mu Rukiko Rukuru, mu rubanza RCA 041/13/HC/KIG na RCA 0550/13/HC/KIG rwo kuwa 08/11/2013 urwo Rukiko rwemeza ko Segatabazi atsindiye 150.000.000Frw, rutegeka irangizarubanza ry'agateganyo ku mafaranga angana na 48.693.484Frw, rutegeka na none ARPEQ kwishyura Segatabazi amafaranga y'ikurikirana rubanza angana na 1.000.000Frw no gutanga amagarama y'urubanza.

[3] ARPEQ yajuririye iki cyemezo mu Rukiko rw'Ikirenga ivuga ko urubanza rutahawe uburemere rukwiriye mu Rukiko Rukuru kandi ko Umucamanza yitiranyije ARPEQ n'ibigo biharanira inyungu kandi ari umushinga udaharanira inyungu. Ikirego cyanditswe kuri No RCAA 0025/13/CS.

[4] Kuwa 14/11/2013 Umuhesha w'Inkiko w'Umwuga yamenyesheje ARPEQ ko ayihaye iminsi 3 yo kurangiza urubanza by'agateganyo nk'uko byategetswe n'Urukiko Rukuru bitaba bityo imitungo yayo igafatirwa.

[5] Mu gihe urubanza rutaraburanishwa mu Rukiko rw'Ikirenga, ARPEQ yatanze ikirego cyihutirwa gishamikiye ku rubanza Nº RCA 0025/13/CS kigamije guhagarika irangizarubanza ry'agateganyo ryategetswe n'Urukiko Rukuru ngo kugirango urubanza rw'ubujurire rubanze ruburanishwe mu Rukiko rw'Ikirenga.

[6] Iburanisha mu ruhame ku kirego cyihutirwa ryabaye kuwa 07/01/2014, Segatabazi ahari kandi yunganiwe na Me Niyomugabo Christophe hamwe na Me Dukeshinema Beatha naho ARPEQ iburanirwa Me Bikotwa Bruce hamwe na Me Nduwamungu Jean Marie Vianney.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO

a) Kumenya niba icyemezo cy'umucamanza cy'irangizarubanza ry'agateganyo kinyuranije n'amategeko.

[7] Ababuranira ARPEQ bavuga ko ikirego cyabo gishingiye ku kuba Umucamanza w'Urukiko Rukuru yaribwirije agategeka irangizarubanza kuri miliyoni 48.693.484Frw nyamara Segatabazi atarigeze atandukanya amafaranga agize ikirego cye kuko cyari icyo kwishyuriza hamwe 150.000.000Frw, ko n'ubwo, mu Rukiko Rukuru, Segatabazi yari yasabye irangizarubanza ry'agateganyo kuri 48.693.484Frw, yari yuririye ku bisobanuro ARPEQ yatangaga bijyanye n'imvano y'umwenda waregewe, ko hatagombaga gutangwa irangizarubanza ry'agateganyo mu gihe ARPEQ itemeranywa na Segatabazi ku mubare w'uwo mwenda, kuko hakiri ikibazo cy'ibimenyetso (pièces justificatives) by'uko izi 48.693.484Frw yazikoresheje, ko icyemezo cy'umucamanza cyatandukiriye kigacamo umwenda ibice, bityo kikaba kinyuranije n'ibikubiye mu ngingo ya 4, iya 7 n'iya 19 z'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[8] Segatabazi n'abamwunganira bavuga ko icyemezo cy'Urukiko Rukuru nta nenge gifite kubera ko muri kopi y'urubanza rwaciwe n'Urukiko Rwisumbuye ku rupapuro rwa kabiri, igika cya 5, muri kopi y'urubanza rwaciwe n'Urukiko Rukuru, urupapuro rwa 5, igika cya 3 no mu myanzuro y'ubujurire, umwenda wa 48.693.694Frw ARPEQ yawemeye, bityo iyi mpamvu ikaba idakwiye guhabwa agaciro kubera ko nta naho ihuriye n'impamvu zihagarika irangizarubanza ziteganyijwe mu ingingo ya 214 y'Itegeko No 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 212 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru igira iti: "Irangizwa ry'agateganyo ryemezwa n'Urukiko rubyibwirije ndetse nta ngwate, iyo: 1) Ikimenyetso cy'ikiburanwa ari inyandiko mvaho, 2) Iyo ikiburanwa ari umwenda wemewe mu rubanza n'uregwa".

[10] Ingingo ya 214 y'Itegeko Nº 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, ivuga ko Uwishyuzwa ashobora guhagarikisha irangizarubanza ry'agateganyo mu rukiko

rwajuririwe mu nzira zikurikira: 1) Gusaba ko irangizwa ryurubanza by'agateganyo rihagarikwa kuko ryatanzwe mu nzira zinyuranije n'amategeko, 2) Gusaba ko ashinganisha amafaranga cyangwa impapuro zivunjwa amafaranga bihagije kugirango bibe ingwate y'ibyo yatsindiye, 3) Gusaba ko irangizarubanza ry'agateganyo rikorwa ku gice kimwe cy'amafaranga yagenwe mu rubanza aho kuba ku rubanza rwose iyo irangizarubanza ry'agateganyo ryateganijwe ku rubanza rwose ridafite ishingiro.

[11] Urukiko rurasanga, ku birebana n'umwenda wa 48.693.484Frw abunganira ARPEQ bavuga ko batawumvikanaho, muri dosiye y'urubanza hari ibaruwa y' Umuyobozi Mukuru uhagarariye ARPEQ mu rwego rw'amategeko, Rwabigwi Cyprien, avugamo ko ayo mafaranga Segatabazi yayashoye muri imwe mu nyubako z'ishuli, akavuga ko bakomeje kumusaba kwihangana akazaba yishyurwa (cote 8), byumvikana ko uwo Muyobozi yemera uwo mwenda. Dosiye y'urubanza igaragaza kandi ko Me Bikotwa uburanira ARPEQ, mu Rukiko Rwisumbuye yavuze ko[1] "bemera ko bagomba kumwishyura [Segatabazi] 48.693.694Frw kuko ariyo Umuryango wemera ko yawutije", naho mu Rukiko Rukuru, Abunganira ARPEQ bavuga ko "ARPEQ… isaba ko kuri 48.693.694Frw yemera kwishyura yajya yishyura Segatabazi 5.000.000Frw buri gihembwe kugira ngo ibikorwa byayo bidahagarara"[2]. Na none mu gika cya 5 cy'imyanzuro yatanzwe mw'izina rya ARPEQ muri uru rubanza mu Rukiko rw'Ikirenga, Me Nduwamungu avuga ko "ayo mafaranga yitwa ko ari ideni, umuryango wemeye kumusubiza, n'amafaranga yawutije angana na 48.693.694Frw". Izi mvugo zose zikaba zigaragaza ko umwenda wa 48.693.694Frw, ARPEQ iwemera, bityo icyemezo cy'umucamanza kikaba ntaho kinyuranyije n'ingingo ya 212 agace ka 2 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru.

[12] Ku birebana n'uko umucamanza ategeka irangizarubanza ry'agateganyo kuri 48.693.694Frw acamo umwenda ibice kandi akaba yaranibwirije kuritanga kuko nta warisabye, Urukiko rurasanga, uretse ko bitari na ngombwa ko bisabwa kubera ko uregwa umwenda yawemeraga, Abunganira ARPEQ bivugiye imbere y'uru rukiko ko Segatabazi yari yasabye irangizarubanza kuri 48.693.694Frw, bikaba bigaragara kandi ko aya mafaranga ari igice cy'umwenda uzwi ndetse wemeranijweho udashingiye ku mwenda wose nkuko byasobanuwe mu gika kibanza, bityo ibyo abahagarariye ARPEQ bavuga bikaba bitahabwa agaciro.

[13] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rusanga icyemezo cyafashwe n'Urukiko Rukuru ku irangazarubanza ry'agateganyo nta nenge gifite kandi ntaho kinyuranije n'ingingo ya 214 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru.

[14] Naho ku mpamvu yerekeranye n'uko icyemezo cy'umucamanza gitegeka irangizarubanza ry'agateganyo kinyuranije n'ibikubiye mu ngingo ya 4, iya 7 n'iya 19 z'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nuko umucamanza yatandukiriye, Urukiko rurasanga nta gutandukira kwabayeho kuko irangizarubanza ry'agateganyo ryabaye ku gice cy'umwenda ARPEQ yiyemerera, ikindi kandi, ntakibuza ko irangizarubanza ryakorwa ku gice cy'umwenda nk'uko biteganywa n'ingingo ya 213 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru ndetse bishimangirwa

[1] Urubanza RC 0280/12/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo hagati ya Segatabazi Protais na Association pour la Promotion de l'Education de Qualité (ARPEQ), kuwa 19/09/2012, igika cya 3.
[2] Urubanza RCA 421/13/HC/KIG; RCA 0550/13/HC/KIG rwaciwe n'Urukiko Rukuru ku Cyicaro cyarwo i Kigali, hagati ya Segatabazi Protais na Association pour la Promotion de l'Education de Qualité (ARPEQ) kuwa 08/11/2013, igika cya 17.

n'abahanga mu mategeko aho bagira bati : irangizarubanza ry'agateganyo ntabwo byanze bikunze rikorwa ku rubanza rwose[3].

[15] Urukiko rurasanga kandi icyo ingingo ya 4, iya 7 n'iya 19 z'Itegeko No 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru zivuga, ari ibirebana no kugena ikiburanwa, kudahinduka kw'ikirego, guca urubanza ku cyaregewe n'ibikubiye mu kirego, ibi bikaba ntaho bihuriye n'irangizarubanza ry'agateganyo ryaregewe kuko nta gutandukira kurigaragaramo, bityo ibyo abahagarariye ARPEQ bavuga bikaba nta shingiro bifite.

b) Kumenya niba izindi mpamvu ARPEQ itanga zatuma irangizarubanza ry'agateganyo rihagarara.

[16] Izindi mpamvu ARPEQ yerekana isaba guhagarika irangizarubanza ry'agateganyo nuko yatse inguzanyo Banki ya Kigali, igasanga irangizarubanza rikomeje konti yayo ya Banki ya Kigali yafatirwa, iyo nguzanyo ntizatangwe ndetse n'abanyeshuli bakaba babura ibyo barya, kuko ari nayo konti yonyine ifite ishyirwaho amafaranga y'ishuli.

[17] Segatabazi avuga ko nk'umucuruzi n'umwubatsi yashatse kubaka ishuli, nyuma aza gushaka abanyamuryango basobanukiwe n'iby'uburezi ngo bakorane, bishyira hamwe muri ARPEQ bashinga ishuli. Mu gihe ryari ririmo kwagurwa ryaje kugira ikibazo cy'amafaranga, Segatabazi yemerera ARPEQ gukoresha amafaranga ye angana na 48.693.694Frw ubwo bari bagitegereje inguzanyo ya Banki, ari nayo akorerwaho irangizarubanza ry'agateganyo. Yongeraho ko ibyo guhagarika irangizarubanza ry'agatenganyo bitagomba guhabwa ishingiro kubera ko ARPEQ yireba gusa ikirengagiza ko nawe afite imyenda n' inguzanyo yafashe muri Banki ku buryo ingwate yatanze ishobora gutezwa cyamunara igihe icyo aricyo cyose.

[18] Ababuranira Segatabazi bongeraho ko ibyo ARPEQ ivuga ko ifite konti imwe gusa nta shingiro bifite kubera ko uretse konti ARPEQ yafunguje muri Banki ya Kigali ku izina rya Regional Positive Choice (RPC) igamije guhunga umwenda ibereyemo segatabazi, isanzwe ifite n'indi konti muri Banque Rwandaise du Développement (BRD).

[19] Ku mpamvu ARPEQ itanga zijyanye n'ifatira rya konti iri muri Banki ya Kigali, Urukiko rurasanga ARPEQ ifite izindi konti nk'uko biri ku rwandiko rw'Umuyobozi Mukuru wa ARPEQ yandikiye Banki ya Kigali rwo kuwa 27/11/2013, bigaragaza ko atari yo yonyine ishyirwaho amafaranga y'ishuli rya ARPEQ, uretse ko niyo yaba ariyo konti yonyine ARPEQ ifite atari byo byaha ishingiro iyo mpamvu. Urukiko rurasanga kandi izo mpamvu ARPEQ itanga zigomba gusuzumwa hazirikanwa ko na Segatabazi avuga ko yafashe imyenda muri banki yananiwe kwishyura ku buryo imitungo ye ishobora gutezwa cyamunara igihe icyo aricyo cyose, kandi ko niba ARPEQ ifite ibyangirika n'ibyo ihomba, n'uwo ifitiye umwenda afite ibyo ahomba n'ibyangirika, bityo ibyo ARPEQ ivuga bikaba bitahabwa ishingiro.

III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko ikirego cyihutirwa cya Association pour la Promotion de l'Education de Qualité (ARPEQ) gisaba guhagarikisha irangizarubanza ry'agateganyo ryategetswe mu

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[3] L'exécution provisoire n'a pas obligatoirement pour effet de permettre l'exécution du jugement dans sa totalité. Reba Jean Vincent, *Procédure Civile*, Paris, Dalloz, 1976, p.748.

rubanza RCA 0421/13/HC/KIG na RCA 0550/13/HC/KIG rwaciwe n'Urukiko Rukuru, ku Cyicaro cyarwo i Kigali nta shingiro gifite.

[21] Rutegetse Association pour la Promotion de l'Education de Qualité (ARPEQ) gutanga amagarama y'urubanza angana na 11.400Frw.