NYIRANDORIMANA v. LETA Y'U RWANDA (MINADEF) N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RADA006/11/CS (Nyirinkwaya, P.J., Kayitesi na Mukandamage, J.) 31 Nyakanga 2015]

Uburyozwe – Ikosa – Uburangare – Indishyi – Inshingano yo kubika ibikoresho bya Gisirikare – N'uburangare ku ruhande rwa Leta iyo itabitse neza ika nagenzura ibikoresho byayo bya Gisirikare, iyo bikoreshejwe nabi kubera ibwo burangare ibitangira indishyi.

Indishyi – Indishyi z'ububabare bw'umubiri – Indishyi z'ububabare bw'umubiri zishingirwa ku mibare ifatika harebwe ibyo umuntu yinjiza, ubumuga yasigiwe, imyaka yari asigaje yo gukora n'ibindi.

Incamake y'ikibazo: Nyirandorimana yaregeye Urukiko Rukuru asaba ko Leta y'u Rwanda (MINADEF) yafatanya na Twagirayezu wari umusirikare wayo bakamuha indishyi kubera ubumuga yatewe n'uko uwo musirikare yamurashe mu rutugu, uruhare rwa Leta y'u Rwanda (MINADEF) akaba arushingira ku burangare yagize mu kubika imbunda zayo ubwo umusirikare wayo witwa Twagirayezu yafatagamo imwe akarasa abantu nawe amurasa ku rutugu. Urwo Rukiko rwemeje ko Leta y'u Rwanda itaryozwa amakosa y'umukozi wayo kubera ko nta burangare yagize, rutegeka ko Twagirayezu ariwe ugomba kwishyura indishyi wenyine.

Nyirandorimana yajuriye mu Rukiko rw'Ikirenga avuga ko indishyi asaba atazishingira ku kuba Twagirayezu yari umukozi wa Leta, ahubwo azishingira ku mpamvu y'uko Leta yagize uburangare bwo gucunga imbunda yayo kandi ari igikoresho gikomeye, bituma Nyirandorimana akomereka.

Leta y'u Rwanda yiregura ivuga ko nta burangare yagize kubera ko Twagirayezu yari umusirikare ukora akazi k'umutekano, ikaba yamuhaye igikoresho itazi ko ari umusazi, bityo ikaba itashinjwa amakosa cyangwa uburangare bw'ushinzwe gukoresha icyo gikoresho, kandi ko kuba yarihishe akajya gufata igikoresho n'ubundi afitiye uburenganzira, bitakwitwa uburangare ku ruhande rwa yo.

Incamake y'icyemezo: 1. Kuba umusirikare mu masaha akuze y'ijoro yarabashije kugaruka mu kigo cya gisirikare agafata imbunda aho yari ibitswe ndetse n'abari barinze ikigo ntibabasha kuyimwambura kandi babona ko agiye mu gikorwa kidasobanutse hanyuma akajya kuyirashisha abantu bigaragaza ko Leta y'u Rwanda yagize uburangare mu kubika no kugenzura imbunda zayo ikaba igomba kubitangira indishyi. Bityo rero ikaba igomba ku bimuhera indishyi ifatanyije na Twagirayezu.

2. Indishyi z'ububabare bw'umubiri zishingirwa ku mibare ifatika harebwe ibyo umuntu yinjiza, ubumuga yasigiwe, imyaka yari asigaje yo gukora n'ibindi.

3. Uwajuriye agomba kugenerwa mu bushishozi bw'urukiko amafaranga y'igihembo cy'Avoka.

Ubujurire bufite ishingiro kuri bimwe;
Abaregwa bagomba gufatanya kwishyura indishyi zaciwe muri uru rubanza ku buryo bungana;
Abaregwa bagomba gufatanya kwishyura amagarama y'urubanza ku buryo bungana.

Amategeko yashingiweho:

Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Iteka rya Perezida N°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ingingo ya 18.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma y'uko Twagirayezu Maurice ahamijwe icyaha cy'ubuhotozi n'ubwinjiracyaha mu buhotozi mu rubanza RP1623/CG/03 rwaciwe tariki ya 11/05/2004 n'Urukiko rwa Gisirikare, Nyirandorimana Claudine yaregeye Urukiko Rukuru asaba ko Twagirayezu na Leta y'u Rwanda (MINADEF) bamuha indishyi zingana na 19.000.000Frw kubera ubumuga yatewe n'uko Twagirayezu wari umusirikare wayo yamurashe mu rutugu bikamuviramo ubumuga, biturutse ku burangare bwayo kuko itabitse neza imbunda zayo, agafatamo imwe akamurasa.

[2] Urukiko Rukuru rwaciye urubanza Twagirayezu adahari, rwemeza ko Leta y'u Rwanda itaryozwa amakosa y'umukozi wayo kubera ko nta burangare yagize, kuko nta kigaragaza ko imbunda Twagirayezu yarashishije abantu hari ahantu yari ibitse, noneho hakagira umusirikare uyimuha kandi atari mu kazi, ko rero Twagirayezu ariwe ugomba kwishyura indishyi wenyine, maze rumutegeka guha Nyirandorimana izingana na 5.000.000Frw, agatanga n'amagarama y'urubanza.

[3] Nyirandorimana yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwanze guca indishyi Leta y'u Rwanda (MINADEF), nyamara uyihagarariye yaremeraga mu rukiko gutanga izingana na 20% y'indishyi zose rwategeka, ntirwanamuha amafaranga y'igihembo cya Avoka kandi yari yayasabye.

[4] Urubanza rwaburanishijwe mu ruhame tariki ya 13/01/2015, no kuwa 07/07/2015 Nyirandorimana Claudine aburanirwa na Me Nizeyimana Léopold, Leta y'u Rwanda ihagararire na Me Umwali Claire, naho Twagirayezu Maurice atitabye, ariko yarahamagawe ahatazwi mu buryo bukurikije amategeko.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba Leta y'u Rwanda yaragize uburangare bwatumye Nyirandoromana akomereka.

[5] Me Nizeyimana uburanira Nyirandorimana avuga ko indishyi asaba atazishingira ku kuba Twagirayezu yari umukozi wa Leta, ahubwo azishingira ku mpamvu y'uko Leta yagize uburangare bwo gucunga imbunda yayo kandi ari igikoresho gikomeye, bituma Nyirandorimana akomereka.

[6] Ku kibazo cyo kumenya niba Nyirandorimana yararashwe na Twagirayezu, Me Nizeyimana avuga ko muri dosiye y'inshinjabyaha bigaragaramo neza mu nyandikomvugo

Nyirandorimana yakorewe na Major Kagiraneza wakurikiranaga dosiye ku musirikare wari warashe abantu ahitwa i Matimba, Nyamirambo aho nawe yarasiwe mu ijoro ryo kuwa 15/06/2002 rishyira kuwa 16/05/2002. Avuga kandi ko no mu ibazwa rya Twagirayezu yavuze ko yarashe abantu mu kivunge, hakaba nta wundi warashe abantu aho hantu muri iryo joro ku buryo habaho kumwitiranya n'undi.

[7] Me Umwali uburanira Leta avuga ko nta burangare Leta yagize kubera ko, Twagirayezu yari umusirikare ukora akazi k'umutekano, Leta imuha igikoresho itazi ko ari umusazi, bityo ikaba itashinjwa amakosa cyangwa uburangare bw'ushinzwe gukoresha icyo gikoresho. Yongeraho ko kuba Twagirayezu yarihishe akajya gufata igikoresho n'ubundi afitiye uburenganzira, bitakwitwa uburangare ku ruhande rwa Leta.

[8] Ku kibazo cyo kumenya niba Twagirayezu ari we warashe Nyirandorimana, Uburanira Leta y'u Rwanda avuga ko harimo ugushidikanya kubera ko mu nyandiko mvugo ziri mu idosiye nshinjabyaha nta kigaragaza ko uwo musirikare yamurashe, kandi ntihavugwa abantu yaba yararashe, hakaba rero nta sano iri hagati ya Nyirandorimana uregera indishyi na Twagirayezu warashe na Leta y'u Rwanda baziregwa.

UKO URUKIKO RUBIBONA

[9] Mu rubanza RP1623/CG/03 rwaciwe tariki ya 12/05/2004 n'Urukiko rwa Gisirikare, Twagirayezu Maurice yakurikiranyweho kuba, kuwa 15/06/2002 mu ijoro rishyira iya 16/06/2002, ari i Matimba ya Nyamirambo yarahotoye abantu 3 aribo Niyoyita Jean Bosco, Karegeya Erneste n'undi umwe utaramenyekanye. Yarezwe kandi ubwinjiracyaha mu buhotozi.

[10] Ubushinjacyaha bwa Gisirikare bwasobanuye ko Twagirayezu yasangiye n'abandi bantu inzoga bagirana amakimbirane baramukubita, ajya gufata imbunda mu Kigo cya gisirikare cya Kigali, araza ashaka abamukubise abanyanyagizamo amasasu bamwe barapfa abandi barakomereka. Twagirayezu nawe yemeye ibyo byaha asaba imbabazi, urukiko rumuhamya icyaha cy'ubuhotozi n'ubwinjiracyaha mu buhotozi.

[11] N'ubwo muri urwo rubanza hatavugwamo Nyirandorimana Claudine uvuga ko yakomerekejwe na Twagirayezu Maurice, bigaragara muri iyo dosiye ko yabajijwe na Major Kagiraneza Kayihura tariki ya 18/06/2002 nk'uwahohotewe (victime) ari mu bitaro bya CHK, avuga ko yarasiwe i Nyamirambo/Matimba kuri 40 kuwa 15/06/2002 mu ma saa saba z'ijoro, n'umuntu wambaye imyenda ya gisivili, ufite imbunda nini, ari kumwe n'abandi bantu bagiye kuri Brigade ya Nyamirambo kurega umuntu wari umaze kumuhohotera, ko atazi uwamurashe n'icyo yamurasiye, ko kandi uwo muntu yarashe n'abandi akikomereza.

[12] Mu ibazwa rye tariki ya 15/06/2002 mu Bushinjacyaha bwa Gisirikare, Twagirayezu yavuze ko yaraye agiye kunywa inzoga i Nyamirambo, haba amakimbirane arakubitwa, agira umujinya ahita atega moto ajya mu kigo afata imbunda, ageze ku burinzi bamubaza aho agiye bashaka kumufata, arababwira ngo ntibamwegere, ibye baraba babyumva, ahita yurira moto asubira kuri 40 i Matimba aho yakubitiwe, ahita arasa abantu bamwe barapfa abandi barakomereka, ko ibyo byabaye ari nka saa saba z'ijoro.

[13] Iyi mvugo ya Twagirayezu ihujwe n'iya Nyirandorimana zigagaza ko uyu nawe ari mu barashwe na Twagirayezu mu ijoro ryo kuwa 15/06/2002 rishyira kuwa 16/06/2002 i Matimba/Nyamirambo.

[14] Imvugo ya Twagirayezu igaragaza kandi ko imbunda yarashishije abantu barimo na Nyirandorimana itari ibitse neza ahantu hafite umutekano, kubera ko yabashije kugaruka mu kigo aho yari yayibitse, mu masaha akuze ya nijoro (saa saba z'ijoro) kandi atari mu kazi, akayifataakajya kuyirashisha abantubasangiraga inzoga bakarwana nawe, ndetse n'abari barinze ikigo ntibabasha kuyimwambura kandi babona ko agiye mu gikorwa kidasobanutse.

[15] Urukiko rurasanga Leta y'u Rwanda (MINADEF) yaragize uburangare mu kubika no kugenzura imbunda yayo, bituma Nyirandorimana araswa, ikaba igomba kubimuhera indishyi ifatanyije na Twagirayezu ikishyura ½ cy'indishyi kubera amakosa yayo, ikindi ½ kikishyurwa na Twagirayezu wamukomerekeje kandi wahamwe n'icyaha cy'ubuhotozi n'ubwinjiracyaha mu buhotozi mu rubanza RP1623/CG/03 rwaciwe kuwa 12/05/2004 n'Urukiko rwa Gisirikare.

Ku byerekeye indishyi Nyirandorimana asaba.

[16] Me Nizeyimana uburanira Nyirandorimana avuga ko mu Rukiko Rukuru, nk'uko bigaragara mu gika cya 5 cy'urubanza, Me Sebazungu waburaniraga Leta y'u Rwanda yemeraga ko Leta yakwishyura 20%, ariko ko mu guca urubanza urukiko rutayiciye ayo 20% ya 5.000.000Frw rwategetse nk'indishyi zigomba guhabwa Nyirandorimana, akaba asaba ko kuri izo ndishyi Twagirayezu yaciwe, Leta y'u Rwanda yakwishyura 5.000.000Frw x 20% = 1.000.000Frw.

[17] Me Umwali uburanira Leta y'u Rwanda avuga ko nta ruhare yagize mu byaha Twagirayezu yahamijwe n'Urukiko rwa Gisirikare, ikaba nta ndishyi igomba kuryozwa.

[18] Avuga kandi ko mu Rukiko Rukuru uwaburaniraga Leta yasobanuye ko itagomba kuryozwa indishyi kuko umukozi wayo wakoze icyaha atari mu kazi kayo, ko ariko mu gihe rwabibona ukundi yatanga 20% y'indishyi zose urega yasabaga, ko kuba rero Urukiko rwarasanze Leta nta ndishyi igomba gucibwa, bikurikije amategeko kandi biri mu murongo w'izindi manza zaciwe n'izindi nkiko.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 258 CCL.III iteganya ko "igikorwa cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[20] Urukiko rurasanga mu kugenera Nyirandorimana indishyi zingana na 5.000.000Frw Urukiko Rukuru rwarabikoze mu bushishozi bwarwo kandi rushingiye ku bumuga bwa 45% yagize, nyamara bene izi ndishyi z'ububabare bw'umubiri zikwiye gushingira ku mibare ifatika harebwe ibyo umuntu yinjiza, ubumuga yasigiwe, imyaka yari asigaje yo gukora n'ibindi, ayo mafaranga rero akaba ataherwaho hagenwa indishyi agomba guhabwa n'abo aziregа.

[21] N'ubwo nta tegeko ryihariye rihari mu kugena bene izi ndishyi, Urukiko rusanga rukwiye kwifashisha ingingo ya 18 y'Iteka rya Perezida Nº31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga iteganya uko indishyi zibarwa mu gihe cy'ibikomere byo ku mubiri bidashobora kwica, ku muntu wahohotewe udashobora kwerekana umusaruro we nyakuri

ukomoka ku murimo nk'uko bimeze kuri Nyirandorima, bityo indishyi zikabarwa mu buryo bukurikira: $\frac{2.500\text{Frw}^{1} \text{ x iminsi 25 x amezi 12) x imyaka 33 x 45\%}}{1+ (8.75\% \text{ x imyaka 33})} = 2.864.952\text{Frw}$

[22] Nk'uko byasobanuwe haruguru, Leta y'u Rwanda igomba kwishyura ½ cya 2.864.952Frw gihwanye na 1.432.476Frw, Twagirayezu nawe akishyura ½ cya 2.864.952Frw gihwanye na 1.432.476Frw.

Ku byerekeye amafaranga y'igihembo cya Avoka Nyirandorimana asaba.

[23] Me Nizeyimana uburanira Nyirandorimana avuga ko atagenewe amafaranga y'igihembo cya Avoka kandi yari yayasabye, anafite umuburanira yihembeye, agasaba ko yagenerwa angana na 1.000.000Frw ku nzego zombi yaburaniyeho.

[24] Me Umwali uburanira Leta y'u Rwanda avuga ko niba Me Nizeyimana yarakoze akazi ko kuburanira Nyirandorimana ku rwego rwa mbere agatsindwa kubera ko ikirego cye nta shingiro gifite, Leta atari yo yari kwishyura igihembo cye, ko n'ubu kuba amuhagarariye ntacyo biyirebaho, ko mu gihe amafaranga y'igihembo cya Avoka yaramuka atanzwe, yakwishyurwa na Twagirayezu ugomba kwishyura indishyi.

UKO URUKIKO RUBIBONA

[25] Urukiko rurasanga ku nzego zombi Nyirandorimana yaburaniyemo yariyambaje Avoka umuburanira, ariko bikaba bigaragara ko nta myanzuro yigeze amukorera ahubwo yaburaniye kuyo Nyirandorimana yikoreye ubwe, bityo amafaranga 1.000.000Frw y'Igihembo cya Avoka asaba akaba atagomba kuyahabwa, ahubwo mu bushishozi bw'urukiko yagenerwa 500.000Frw ku nzego zombi yaburaniyeho, Leta y'u Rwanda ikishyura ½ cyayo gihwanye na 250.000Frw, na Twagirayezu akishyura ½ cyayo gihwanye na 250.000Frw.

III. ICYEMEZO CY'URUKIKO

[26] Rwemeje ko ubujurire bwa Nyirandorimana Claudine bufite ishingiro kuri bimwe;

[27] Rutegetse Leta y'u Rwanda kwishyura Nyirandorimana Claudine indishyi zingana na 1.432.476Frw na 250.000Frw y'igihembo cya Avoka, yose hamwe akaba 1.682.476Frw;

[28] Rutegetse Twagirayezu Maurice kwishyura Nyirandorimana indishyi zingana na 1.432.476Frw na 250.000Frw y'igihembo cya Avoka, yose hamwe akaba 1.682.476Frw;

[29] Rutegetse Twagirayezu kwishyura ½ cy'amafaranga y'amagarama y'urubanza ikindi ½ kigaherera ku Isanduku ya Leta.

[1] Mu manza zitandukanye nka RCAA0003/11/CS rwaciwe kuwa 12/10/2012 na RCAA0202/07/CS rwaciwe kuwa 09/04/2009, Urukiko rw'Ikirenga rwemeje ko 2.500Frw ariyo mafaranga yafatwa nk'umushahara muto w'umuntu ku munsi.