UBUSHINJACYAHA v. UWIRINGIYIMANA

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/PEN0004/15/CS (Kayitesi, P.J., Hitiyaremye na Munyangeri, J.) 4 Werurwe 2016]

Amategeko Mpanabyaha – Akarengane – Gutegeka uregwa kwishyura ihazabu kugira ngo abone gufungurwa ni akarengane, kuko ntaho biteganyijwe mu mategeko y'u Rwanda.

Incamake y'ikibazo: Uwiringiyimana yakurikiranywe ku cyaha cyo gukomeretsa amatungo y'undi, Urukiko rumuhamya icyaha, rumuhanisha igifungo cy'umwaka umwe, no gutanga ihazabu y'amafaranga ibihumbi magana atanu (500.000Frw) kandi akazava muri gereza ari uko ayishyuye yose. Ntiyishimiye iyo mikirize ajurira mu Rukiko Rwisumbuye, narwo rwemeza ko nta gihindutse ku mikirize y'urubanza. Yatanze ikirego asaba gusobanuza urubanza RPA0358/13/TGI/NGOMA, no gufungurwa, ihazabu yaciwe akazayishyura ageze hanze kubera ko ari umukene udashobora kubona amafaranga y'ihazabu yaciwe kandi afunzwe, Urukiko rwemeza ko nta kidasobanutse muri urwo rubanza.

Uwiringiyimana yasabye Urwego rw'Umuvunyi gusubirishamo urubanza RPA0358/13/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku mpamvu z'akarengane kubera ko inkiko zamurenganyije, Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, maze nawe yemeza ko rusubirwamo.

Ubushinjacyaha buvuga ko ibyo Uwiringiyimana avuga ko yarenganyijwe kuko Urukiko rwategetse ko azafungurwa ari uko amaze gutanga ihazabu byahabwa ishingiro, kuko asanga ashingiye ku mategeko, igihano cy'igifungo kirangirizwa muri gereza.

Incamake y'icyemezo: Kuba Uwiringiyimana yarategetswe n'urukiko ko azafungurwa ari uko amaze kwishyura ihazabu ingana na 500.000Frw yaciwe, ni akarengane yagiriwe, kuko icyo gihano ntaho giteganyijwe mu mategeko y'u Rwanda.

Ikirego cyo gusubirishamo ku mpamvu z'akarengane gifite ishingiro.
Uwiringiyimana Aaron ahita arekurwa urubanza rukimara gusomwa.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 436.

Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/20012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 81 igika cya 1, agace ka 2 n'aka 3.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Sake mu rubanza RP0145/13/TB/SKE, Uwiringiyimana Aaron ashinjwa icyaha cyo gukomeretsa amatungo y'undi, Urukiko rwemeza ko icyo cyaha kimuhama, rumuhanisha igifungo cy'umwaka umwe (1), agatanga n'ihazabu y'amafaranga ibihumbi magana atanu (500.000Frw) kandi akazava muri gereza ari uko ayishyuye yose.

[2] Uwiringiyimana Aaron ntiyishimiye iyo mikirize arajurira mu Rukiko Rwisumbuye, mu rubanza RPA0358/13/TGI/NGOMA, urukiko rwemeza ko imikirize y'urubanza RP0145/13/TB/SKE rwaciwe ku wa 31/10/2013 idahindutse muri byose.

[3] Uwiringiyimana Aaron ntiyishimiye iyo mikirize atanga ikirego mu rubanza RPA0026/15/TGI/NGOMA asaba gusobanuza urubanza RPA0358/13/TGI/NGOMA, no gufungurwa, ihazabu yaciwe akazayishyura ageze hanze kubera ko ari umukene udashobora kubona amafaranga y'ihazabu yaciwe kandi afunzwe, Urukiko rwemeza ko nta kidasobanutse muri urwo rubanza.

[4] Uwiringiyimana yasabye Urwego rw'Umuvunyi gusubirishamo urubanza RPA0358/13/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku mpamvu z'akarengane kubera ko inkiko zamurenganyije, Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga ku itariki 25/06/2015, asaba ko urubanza RPA0358/13/TGI/NGOMArwavuzwe haruguru rwasubirwamo ku mpamvu z'akarengane, maze uyu yemeza ko rusubirwamo.

[5] Urubanza rwaburanishijwe ku wa 29/02/2016 Uwiriyingiyimana Aaron yunganiwe na Me Mbonyimpaye Elias, Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba kuba Uwiringiyimana Aaron yarategetswe n'Urukiko ko azafungurwa abanje kwishyura ihazabu yose yaciwe bigize impamvu y'akarengane.

[6] Uwiringiyimana avuga ko yasubirishijemo ku mpamvu z'akarengane urubanza RPA0358/13/TGI/NGOMA kubera ko Urukiko Rwisumbuye rwa Ngoma rwamuhanishije igifungo cy'umwaka umwe n'ihazabu ya 500.000Frw rugategeka ko azafungurwa abanje kuyishyura kandi adashobora kuyabona kuko afunzwe igihe kirekire kandi ari umukene. Asobanura ko mu gihe yarangije igihano cy'igifungo cy'umwaka umwe yari yarakatiwe, yakomeje gufungwa imyaka igera kuri ibiri, akaba asaba kurenganurwa akavanirwaho igihano yahawe cy'ihazabu agafungurwa.

[7] Me Mbonyimpaye Elias umwunganira avuga ko umucamanza yaciye urubanza atubahirije ingingo ya 4 y'Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, aho iteganya ko inkiko zibujijwe guca imanza ku buryo bugenekereje, akaba asaba ko rero Uwiringiyimana yarenganurwa akarekurwa kuko atakomeza gufungwa azira ko atishyuye ihazabu, kandi atari ko amategeko abiteganya.

[8] Avuga kandi ko n'ingingo ya 144 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryakurikizwaga igihe Uwiringiyimana akora icyaha nayo itubahirijwe, akaba asaba ko uwo yunganira arenganurwa akarekurwa.

[9] Ubushinjacyaha buvuga ko ibyo Uwiringiyimana avuga ko yarenganyijwe kuko Urukiko rwategetse ko azafungurwa ari uko amaze gutanga ihazabu yaciwe ingana na 500.000Frw kandi ari umukene atayabona kuko afunze, byahabwa ishingiro, kuko asanga ashingiye ku ngingo ya 229(1) y'Itegeko N°03/13 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza nshinjabyaha iteganya ko "igihano cy'igifungo kirangirizwa muri gereza", ku ngingo ya 232 y'Itegeko ryavuzwe ikaba iteganya ko "ihazabu ihabwa umwanditsi w'Urukiko mu minsi umunani (8) kuva urubanza rubaye ndakuka, ko icyo gihe gishobora kongerwa na Perezida w'Urukiko ariko ntikirenge amezi atandatu (6), no ku ngingo yaryo ya 233(2) igateganya ko "iyo icyo gihe kirangiye, uwatsinzwe atishyuye, hakoreshwa ingufu za Leta", igihano cy'igifungo akaba ari cyo cyonyine kirangirizwa muri gereza, naho icy'ihazabu kikarangirizwa ku mitungo.

[10] Kubera izo mpamvu, kuba muri 2014 Uwiringiyimana yari yararangije igihano cy'igifungo cy'umwaka yari yarakatiwe, ariko kugeza muri 2016 akaba agifunzwe, Ubushinjacyaha busanga yaragiriwe akarengane nk'uko abivuga, kuko yaba yaragizwe ingwate yo gufungwa mu mwanya wo kwishyura ihazabu, bisobanuye ko aramutse abuze iyo hazabu yazafungwa burundu kandi atari byo amategeko ateganya, bukaba busaba ko urukiko rwakwemeza ko yagiriwe akarengane, rukaba rwategeka ko afungurwa kuko yarangije igihano cy'igifungo cy'umwaka umwe yari yakatiwe.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 436 y'Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, urukiko rwashingiyeho ruhana Uwiringiyimana Aaron iteganya ko "Umuntu wese, ku bw'inabi kandi nta mpamvu, wica cyangwa ukomeretsa bikomeye amatungo y'undi, ahanishwa igifungo kuva ku mezi atandatu kugeza ku mwaka n'ihazabu y'amafaranga y'u Rwanda kuva ku bihumbi magana abiri kugeza kuri miliyoni ebyiri cyangwa kimwe gusa muri ibyo bihano".

[12] Ingingo ya 81 igika cya 1, agace ka 2 n'aka 3 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/20012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko "Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira:

> Iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese;
>
> Iyo urubanza rudashobora kurangizwa ukurikije imikirize yarwo".

[13] Inyandiko mvugo y'ifunga iri muri dosiye y'urubanza igaragaza ko Uwiringiyimana Aaron yafunzwe ku wa 05/07/2013, naho urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane rumukatira igifungo cy'umwaka n'ihazabu ya 500.000Frw akazava muri gereza ari uko ayishyuye yose.

[14] Urukiko rurasanga kuva Uwiringiyimana Aaron afungwa ku wa 05/07/2013 kugeza ku wa 04/07/2014, umwaka w'igifungo yakatiwe n'Urukiko Rwisumbuye rwa Ngoma yari awurangije, agumishwamo n'uko atishyuye ihazabu ya 500.000Frw kuko urwo rukiko rwategetse ko azavamo ari uko arangije kuyishyura yose.

[15] Urukiko rurasanga, kuba Uwiringiyimana Aaron yarategetswe n'urukiko ko azafungurwa ari uko amaze kwishyura ihazabu ingana na 500.000Frw yaciwe, ari akarengane

yagiriwe, kuko uretse ko ntaho icyo gihano giteganyijwe mu ngingo ya 436 y'Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, nta n'aho giteganyijwe mu yandi mategeko y'u Rwanda.

[16] Urukiko rurasanga rero, kuba muri 2014 Uwiringiyimana Aaron yari yararangije igihano cy'igifungo cy'umwaka yakatiwe, agakomeza gufungwa kugeza n'uyu munsi, ari akarengane yagiriwe, kuko yakomeje gufungwa aho kwishyuzwa ihazabu kandi atari byo amategeko ateganya. Urukiko rukaba rusanga agomba gufungurwa kuko yarangije igihano cy'igifungo cy'umwaka umwe yakatiwe, ihazabu yategetswe kwishyura ikavanwaho kuko itakurikije amategeko.

[17] Hashingiwe ku ngingo z'amategeko zimaze kuvugwa, Urukiko rurasanga urubanza RPA0358/13/TGI/NGOMA rwaciwe ku wa 31/10/2013 n'Urukiko Rwisumbuye rwa Ngoma rwarirengagije amategeko kandi rutanashobora kurangizwa mu gihe Uwiringiyimana Aaron agaragaza ko atishoboye, ariko nyamara urwo rubanza rukaba rwarategetse ko azava muri gereza ari uko yarangije kwishyura 500.000Frw y'ihazabu yaciwe bivuze ko atazavamo kandi igihano cy'igifungo yakatiwe ari umwaka umwe gusa, bityo rero uru rubanza rwamuteje akarengane rukaba rugomba kuvanwaho ku bijyanye n'ibyo rwategetse ko azava muri gereza ari uko yarangije kwishyura 500.000Frw y'ihazabu yaciwe, akarekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo yakatiwe.

III. ICYEMEZO CY'URUKIKO

[18] Rwemeje ko ikirego cya Uwiringiyimana Aaron cyo gusubirishamo ku mpamvu z'akarengane gifite ishingiro.

[19] Rwemeje ko urubanza RPA0358/13/TGI/NGOMA rwaciwe ku wa 21/02/2014 n'Urukiko Rwisumbuye rwa Ngoma n'urubanza RP0145/13/TB/SKE rwaciwe n'Urukiko rw'Ibanze rwa Sake ku wa 31/10/2013 zihindutse, ku bijyanye n'ibyo zemeje ko Uwiringiyimana Aaron azafungurwa ari uko yishyuye ihazabu yose yaciwe.

[20] Rutegetse ko igihano Uwiringiyimana Aaron yahawe cy'uko azava muri gereza ari uko arangije kwishyura 500.000Frw y'ihazabu yaciwe kivanyweho.

[21] Rutegetse ko Uwiringiyimana Aaron ahita arekurwa urubanza rukimara gusomwa.

[22] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.