AKARERE KA NYARUGENGE v. MUKANGEMANYI

[Rwanda URUKIKO RW'IKIRENGA – RS/RV/INJUST/AD0001/16/CS – (Mukanyundo, P.J., Kayitesi R. na Rugabirwa, J.) 30 Kamena 2017]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Urupfu rw'umwe mu bashakanye aburana mu rubanza – Inshingano z'umwe mu bashakanye zo gukomeza urubanza igihe uwo bashakanye wari umuburanyi mu rubanza apfuye – Iyo umwe mu bashakanye wari umuburanyi mu rubanza rushingiye ku mutungo apfuye, usigaye niwe ukomezo urwo rubanza kuko ku bw'itegeko niwe wegukana umutungo wose – Itegeko N^{o}21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 129 – Itegeko N^{o}27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 76.

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Gusubiramo urubanza ku mpamvu z'akarengane – Ingaruka zo kutiyambaza inzira z'ubujurire ziteganwa n'amategeko mbere yo gushyikiriza ikirego ku rwego rw'umuvunyi – Umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko ntiyemerewe gusaba ko urubanza yatsinzwe rusubirishwamo ku mpamvu z'akarengane – Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 81.

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Gusubiramo urubanza ku mpamvu z'akarengane – Icyemezo cya Perezida w'Urukiko rw'Ikirenga – Icyemezo cya Perezida w'Urukiko rw'Ikirenga gitegeka ko dosiye ivuye mu rwego rw'Umuvunyi yandikwa mu gitabo cy'ibirego, ntikibuza ko, mu iburanisha ry'urubanza, haba izindi mpaka zishingiye ku bubasha bw'Urukiko ndetse no ku iyakirwa ry'ikirego, kandi inteko iburanisha ifite ububasha bwo gusuzuma niba ikirego cyaratanzwe mu rwego rw'Umuvunyi mu buryo bukurikije amategeko – Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 80.

Incamake y'ikibazo: Rwigara yareze Akarere ka Nyarugenge mu Rukiko Rwisumbuye rwa Nyarugenge avuga ko iyimurwa kamukoreye kubera inyungu rusange ritakozwe mu buryo bukurikije amategeko agenga iyimurwa kuko atamenyeshejwe iryo yimurwa maze urwo Rukiko rwemeza ko yimuwe mu buryo budakurikije amategeko, kubera ko Akarere katabashije kugaragaza ibimenyetso bihamya ko imihango iteganywa n'amategeko yiyimurwa ku mpamvu z'inyungu rusanga yubahirijwe.

Akarere ka Nyarugenge ntikishimiye imikirize y'urubanza maze kandikira Urwego rw'Umuvunyi gasaba ko urwo urubanza rwasubirishwamo ku mpamvu z'akarengane, kubera ko nyuma y'icibwa ryarwo kabonye inyandiko zigaragaza ko Rwigara yari azi neza iby'iyimurwa kandi ko n'irangizwa ryarwo ritari gushoboka.Urwego rw'Umuvunyi rumaze gusuzuma ikibazo cy'Akarere ka Nyarugenge, rwandikiye Perezida w'Urukiko rw'Ikirenga, rusaba ko urwo urubanza rusubirwamo ku mpamvu z'akarengane.

Hagati aho Rwigara yitabye imana bityo asimburwa mu rubanza na Succession Rwigara Assinapol itegura n'imyanzuro y'ukwiregura aho yatanzemo inzitizi yo kutakira ikirego cy'Akarere ka Nyarugenge ivuga ko kasubirishijemo urubanza ku mpamvu z'akarengane mu buryo budakurikije Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga kuko hari inzira z'ubujurire Akarere ka Nyarugenge kirengagije.

Urukiko rushingiye ku ngingo ya 76 y'Itegeko N°27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, rwasanze kuba uwatangiye rubanza ari Rwigara kandi akaba yaritabye Imana yasimburwa n'uwo bashakanye Mukangemanyi aho gusimburwa na Succession Rwigara ihagarariwe na Mukangemanyi, kuko Succession itagira ubuzimagatozi.

Urukiko rwabanje gusuzuma inzitizi yo kutakira ikirego yatanzwe n'uregwa, Akarere kiregura kavuga ko iyo nzitizi nta shingiro ifite, kubera ko ikibazo cyo kumenya niba urubanza rwasubirwamo cyangwa rutasubirwamo kuko rutajuririwe bisuzumwa n'Urwego rw'Umuvunyi, ko iyo rwohereje urubanza mu Rukiko rw'Ikirenga, Perezida warwo agategeka ko rwandika mu bitabo by'ibirego by'urwo Rukiko, ikibazo kirebana n'ububasha kitongera gusuzumwa, bityo iyi nzitizi yatanzwe impita gihe kuko ikirego cyamaze kwakirwa, icyo kibazo rero kikaba kitari mu bigomba gusuzumwa n'Urukiko rw'Ikirenga kandi ko haramutse haranabaye amakosa, asanga yarakosowe n'izo nzego zombi.

Uregwa asobanura avuga ko akarere ka nyarugenge kari gafite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntikatigeze kajuririra uru urubanza, cyangwa se ngo karusubirishemo ingingo nshya, dore ko kavuga ko hari ibimenyetso katari gafite mu iburanisha ry'urwo rubanza, ko ariko kaje kubona nyuma. Na none akomeza avuga ko Umuvunyi atari umuburanyi muri uru rubanza, kandi ko kuba Perezida w'Urukiko rw'Ikirenga yarafashe icyemezo gitegeka ko ikirego cyandikwa mu gitabo cy'ibirego kugira ngo ruzaburanishwe, icyemezo cye gifatwa mu rwego rw'ubuyobozi ariko ko bitavuga ko ababuranyi badashobora gusaba ko amategeko yubahirizwa, cyane cyane ajyanye n'ububasha bw'Urukiko kuko ari ndemyagihugu (d'ordre public).

Incamake y'icyemezo: 1. Iyo umwe mu bashakanye wari umuburanyi mu urubanza rushingiye ku mutungo apfuye, usigaye niwe ukomezo urwo rubanza kuko ku bw'itegeko niwe yegukana umutungo wose. Bityo Rwigara Assinapol asimbuwe muri uru rubanza n'uwo bashyingiranywe Mukangemanyi.

2. Icyemezo cya Perezida w'Urukiko rw'Ikirenga gitegeka ko dosiye ivuye mu rwego rw'Umuvunyi yandikwa mu gitabo cy'ibirego, ntigikuraho ko mu iburanisha ry'urubanza haba izindi mpaka zishingiye ku bubasha bw'Urukiko ndetse no ku iyakirwa ry'ikirego, kandi inteko iburanisha ifite ububasha bwo gusuzuma niba ikirego cyaratanzwe mu rwego rw'Umuvunyi mu buryo bukurikije amategeko.

3. Umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko ntiyemerewe gusaba ko urubanza yatsinzwe rusubirishwamo ku mpamvu z'akarengane, bityo kuba urega yivukije inzira zari gutuma ashobora kurenganurwa mu gihe yari amaze kubona ibimenyetso yita ko ari bishya yari atunze ubwe, ntabwo yemerewe gusubirishamo urubanza ku mpamvu z'akarengane.

4. Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse bityo rero kuba urega yatanze ikirego mu buryo bunyuranyije n'amategeko, bigatuma uregwa yiyambaza umunyamategeko umuburanira agomba guhemba ndetse no gukurikirana urubanza muri uru Rukiko agomba kugenerwa amafaranga y'igihembo cya Avoka na y'ikurikiranarubanza agenwe mu bushishozi bw'Urukiko.

Inzitizi yatanzwe yo kutakira ikirego ifite ishingiro.

Amategeko yashingiweho:

Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo za 79, 80 na 81.
Itegeko N°27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 79.
Itegeko Nº21/2012 ryo ku wa 14/06/2012 ryerekeye imiburashirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 129, 162, 184 na 186(3).
Itegeko-teka ryo kuwa 30 Nyakanga 1888, rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku kirego cyatanzwe na Rwigara Assinapol mu Rukiko Rwisumbuye rwa Nyarugenge, arega Akarere ka Nyarugenge, asaba "eviction de la parcelle 5860 Rugenge pour projet non révélé", ku mpamvu y'uko iyimurwa rye kubera inyungu rusange ritakozwe mu buryo bukurikije amategeko agenga iyimurwa, kuko atamenyeshejwe iryo yimurwa, akabisabira n'indishyi. Akarere ka Nyarugenge kireguye kavuga ko icyo kirego nta shingiro gifite kubera ko Rwigara yemenyeshejwe iryo yimurwa kuko yari mu nama y'abaturage yavugiwemo iryo yimurwa ndetse nyuma yo kumenyeshwa agaciro kagenwe ku mutungo we, akaba yaranditse agaragaza ko atishimiye amafaranga y'ingurane yagenwe ku mutungo we.

[2] Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RAD0010/12/TGI/NYGE, ku wa 28/02/2013, rwemeza ko Akarere ka Nyarugenge kimuye Rwigara Assinapol mu buryo budakurikije amategeko, kubera ko rwasanze Akarere ka Nyarugenge katarashoboye kurugaragariza ibimenyetso bihamya ko imihango iteganywa n'amategeko yiyimurwa ku mpamvu z'inyungu rusanga, yubahirijwe.

[3] Akarere ka Nyarugenge kandikiye Urwego rw'Umuvunyi gasaba ko urubanza RAD0010/12/TGI/NYGE rwasubirwamo ku mpamvu z'akarengane, kubera ko nyuma y'icibwa ry'urubanza, kabonye inyandiko zigaragaza ko Rwigara Assinapol, n'ubwo yaburanye avuga ko atari azi iby'iryo yimurwa, yari azi neza iby'iyimurwa, gasobanura kandi ko n'irangizwa ry'urwo rubanza mu buryo rwaciwemo ritari gushoboka, ariyo mpamvu gasaba ko rusubirwamo kugira ngo imikirize y'urubanza ihinduke.

[4] Urwego rw'Umuvunyi rumaze gusuzuma ikibazo cy'Akarere ka Nyarugenge, rwandikiye Perezida w'Urukiko rw'Ikirenga, rusaba ko urubanza RAD0010/12/TGI/NYGE, rusubirwamo ku mpamvu z'akarengane, kuko rwasanze ibyemejwe kandi bigategekwa n'Urukiko Rwisumbuye rwa Nyarugenge, ko Akarere ka Nyarugenge kagomba kwimura Rwigara Assinapol hubahirijwe amategeko agenga iyimurwa ku bw'inyungu rusange, ishyirwa mu bikorwa ry'icyo cyemezo ryaba rije impitagihe, bitewe n'uko nk'imwe mu mihango iteganywa n'itegeko ijyanye no kungurana ibitekerezo n'abatuye cyangwa abafite ibikorwa aho umushinga wo kwimura abantu uzakorerwa ari

imihango ikorwa mbere y'igikorwa cyo kwimura bene imitungo, uko kungurana ibitekerezo rero kukaba kutakorwa nyuma y'uko kwimura abantu byarangije gukorwa. Byongeye kandi n'umuhango wo gukora urutonde rw'umutungo w'uwimurwa ahazakorerwa ibikorwa rusange no kurutangaza nawo utakorwa kuko abantu bamaze kwimurwa, uwo muhango ukaba ntacyo waba umaze haba ku ruhande rwa Rwigara Assinapol cyangwa se ku ruhande rw'Akarere ka Nyarugenge, kuko nk'uko byasobanuwe haruguru, byaba bitubahirije amategeko.

[5] Urwego rw'Umuvunyi rushingiye ku ngingo ya 79, igika cya mbere, agace ka 3, iteganya ko urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirishwamo, iyo rudashobora kurangizwa ukurikije imikirize yarwo, rusaba ko urubanza RAD0010/12/TGI/NYGE rwasubirwamo kuko bigaragara ko kururangiza bidashoboka.

[6] Mu myanzuro yo kwiregura, uhagarariye Succession Rwigara Assinapol yatanze inzitizi yo kutakira ikirego cy'Akarere ka Nyarugenge avuga ko kasubirishijemo urubanza ku mpamvu z'akarengane mu buryo budakurikije Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

[7] Iburanisha ryo ku wa wa 21/03/2017 ryabereye mu ruhame, Akarere ka Nyarugenge gahagarariwe na Me Rubango Epimaque, Intumwa ya Leta, naho Succession Rwigara Assinapol ihagarariwe na Me Rwagatare Janvier. Uwo munsi iburanisha ryarasubitswe ryimurirwa ku wa 23/05/2017 kubera ko Me Rwagatare Janvier yitabye avuga ko ahagarariye Succession Rwigara Assinapol nayo ihagarariwe na Mukangemanyi Adéline, ariko Urukiko rushingiye ku ngingo ya 76 y'Itegeko N°27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, rusanga kuba uwatangiye uru rubanza ari Rwigara Assinapol kandi yarageze nyuma agapfa, yasimburwa n'uwo bashakanye Mukangemanyi Adéline aho gusimburwa na Succession Rwigara Assinapol ihagarariwe na Mukangemanyi Adeline, kuko Succession itagira ubuzimagatozi. Urukiko rwasanze ariko Mukangemanyi Adéline atahamagarwa muri uru rubanza mu gihe atarugaragarije ko ariwe washakanye na nyakwigendera mu buryo bukurikije amategeko, bityo rutegeka ko urubanza rusubikwa kugira ngo Me Rwagatare Janvier azabanze arushyikirize icyemezo cy'ubushyingiranwe (acte de mariage).

[8] Hashingiwe ku ngingo ya 76 y'Itegeko N°27/2016 ryo ku wa 08/07/2016, ryavuzwe haruguru, iteganya ko: "Abashingiranywe bafitanye amasezerano y'ivangamutungo rusange bazungurwa mu buryo bukurikira: 1° iyo umwe apfuye usigaye yegukana umutungo wose akubahiriza inshingano yo kurera abana n'ab'uwapfuye bemewe n'amategeko"; urukiko rwasanze icyemezo cyo gushyingiranwa Mukangemanyi Adéline yarushyikirije kigaragaza ko Rwigara Assinapol yashyingiranywe na Mukangemanyi Adéline mu buryo bwemewe n'amategeko kandi ko basezeranye ivangamutungo rusange, bityo rushingiye ku ngingo ya 129 y'Itegeko Nº 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburashirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rwemeza ko Rwigara Assinapol asimbuwe muri uru rubanza n'uwo bashyingiranywe Mukangemanyi Adéline.

[9] Me Rwagatare Janvier uhagarariye Mukangemanyi Adéline, yatanze inzitizi yo kutakira ibujurire bw'Akarere ka Nyarugenge kubera ko hari ibyo katubahirije.

II. IBIBAZO BYASUZUMWE N'ISESENGURA RYABYO

1. Kumenya niba hari inzira z'ubujurire Akarere ka Nyarugenge kibujije, bikaba byatuma ikirego katanze gisubirishamo urubanza ku mpamvu z'akarengane kitakwakirwa.

[10] Me Rwagatare Janvier asobanura ko ingingo ya 81, igika cya 2, y'Itegeko N°03/2012/OL ryo ku wa 13/06/2012, rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko atemerewe gusaba ko urubanza yatsinzwe rusubirishwamo hakurikijwe ibiteganywa n'ingingo zivugwa muri iki cyiciro, ko icyiciro iyi ngingo ivuga ari icyo "Gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe ku rwego rwa nyuma". Ko rero Akarere ka Nyarugenge katigeze kajuririra urubanza RAD0010/12/TGI/NYGE, cyangwa se ngo karusubirishemo ingingo nshya (recours en révision), dore ko ugahagarariye avuga ko hari ibimenyetso katari gafite mu iburanisha ry'urwo rubanza, ko ariko kaje kubona nyuma.

[11] Asobanura ko Akarere kari kemeye imikirize y'urubanza kuko kari kishyuye amafaranga kaciwe muri urwo rubanza, ariyo mpamvu basanga Akarere ka Nyarugenge katari kemerewe gukoresha iyi nzira y'ubujurire budasanzwe (voie de recours spéciale). Avuga ko Umuvunyi atari umuburanyi muri uru rubanza, kandi ko ibyo Akarere ka Nyarugenge kaburananisha ko kuba Perezida w'Urukiko rw'Ikirenga yarafashe icyemezo gitegeka ko ikirego cyandikwa mu gitabo cy'ibirego kugira ngo ruzaburanishwe, icyemezo cye gifatwa mu rwego rw'ubuyobozi ariko ko bitavuga ko ababuranyi badashobora gusaba ko amategeko yubahirizwa, cyane cyane ajyanye n'ububasha bw'Urukiko kuko ari ndemyagihugu (d'ordre public).

[12] Me Rwagatare Janvier abajijwe uko uwo aburanira yakwishyurwa indishyi n'ingurane kubera iyimurwa mu mutungo we kubera inyungu rusange, uru rukiko ruramutse ruhaye ishingiro inzitizi atanze, asubiza ko badasaba ko bahabwa amazu ari muri icyo kibanza kuko atari we wayubatse, ko ibyo urubanza rutegeka Akarere bizwi, aribyo bikwiye gukorwa, kandi ko ubu hari urundi rubanza ruregera guhatira Akarere ka Nyarugenge gushyira mu bikorwa urubanza RAD0010/12/TGI/NYGE rusabirwa gusubirishwamo ku mpamvu z'akarengane, urwo rubanza rukaba rufite RAD0041/14/TGI/NYGE. Naho kuba uburanira Akarere ka Nyarugenge avuga ko hakoreshejwe *équité*, Me Rwagatare Janvier avuga ko niba Akarere ka Nyarugenge karasanze uru rubanza rudashobora kurangizwa, iyo *équité* kari kuyikoresha gasubirishamo urubanza ingingo nshya, ariko ko *équité* itasimbura ububasha bw'Urukiko rw'Ikirenga.

[13] Me Rubango Epimaque wari uhagarariye Akarere ka Nyarugenge mu nama ntegurarubanza yabaye ku wa 13/02/2017, yavuze ko iyo nzitizi nta shingiro ifite, kubera ko ikibazo cyo kumenya niba urubanza rwasubirwamo cyangwa rutasubirwamo kuko rutajuririwe, bisuzumwa n'Urwego rw'Umuvunyi, ko iyo rwohereje urubanza mu Rukiko rw'Ikirenga, Perezida warwo agategeka ko rwandika mu bitabo by'ibirego by'urwo rukiko, ikibazo kirebana n'ububasha kitongera gusuzumwa, bivuze ko iyi nzitizi abo baburana batanga ikirego cyaramaze kwakirwa babikoze igihe cyabyo cyararenze, ko rero icyo kibazo kitari mu bigomba gusuzumwa n'Urukiko rw'Ikirenga.

[14] Asobanura ko ikibazo cyashyikirijwe uru rukiko kiri mu nzira zidasanzwe mu Rukiko rw'Ikirenga, ko urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane rwaciwe ku wa 11/01/2014, ko itegeko rivuga ko kugira ngo rwakirwe rugomba kuba rwoherejwe n'Urwego rw'Umuvunyi bigasuzumwa na Perezida w'Urukiko rw'Ikirenga, kandi ko ibyo byakozwe, ko haramutse haranabaye amakosa, asanga yarakosowe n'izo nzego zombi (couvertes). Avuga ko kandi hari n'ikibazo cyo gushyira mu gaciro (ibyo yise équité/equity) kuko niba urubanza rutarashoboraga kurangizwa nta yindi nzira yari gukoreshwa n'umuburanyi usibye kurusubirishamo ku mpamvu z'akarengane.

[15] Akomeza avuga ko imikirize y'urubanza RAD 0010/12/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rusabirwa gusubirishwamo ku mpamvu z'akarengane rudashobora kurangizwa, ihura n'ibiteganywa n'ingingo ya 81, agace ka 3, kuko urukiko rwategetse ko Rwigara yimurwa ku buryo bukurikije amategeko, kandi ikibanza kiburanwa cyaramaze kubakwamo inzu ya

RSSB (yahurijwemo icyahoze ari RAMA na Caisse Sociale), ariyo mpamvu hakurikijwe uko urubanza rwaciwe, kumubarira agaciro k'ikibanza habarwa n'ibitari ibye, ariyo mpamvu basaba ko uru rukiko ruvuze ko rufite ububasha, rwakwemeza ko Rwigara Assinapol yishyurwa amafaranga yari yagenewe icyo gihe ahwanye n'ibyari muri icyo kibanza icyo gihe.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 79, igika cya 4, y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko: "Iyo Urwego rw'Umuvunyi rusanze uburyo urubanza rwaciwe birimo akarengane rwandikira Perezida w'Urukiko rw'Ikirenga rumusaba ko urubanza rwakongera kuburanishwa. Rumushyikiriza raporo ikubiyemo imiterere y'icyo kibazo n'ibimenyetso bigaragaza ako karengane". Igika cya nyuma cy'iyo ngingo iteganya ko "Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane ntigikorerwa ibanzirizasuzuma".

[17] Ingingo ya 80 y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012, iteganya ko "iyo Perezida w'Urukiko rw'Ikirenga asuzumye raporo y'Ubugenzuzi Bukuru bw'Inkiko akemeza ko urubanza rwongera kuburanishwa, yohereza dosiye Umwanditsi Mukuru w'Urukiko rw'Ikirenga kugira ngo ayandike mu bitabo byabugenewe, akanagena kandi n'itariki y'iburanisha n'inteko y'abacamanza wabazaruburanisha. Agena kandi muri abo bacamanza uzakora raporo...."

[18] Naho ingingo ya 81, igika cya mbere, agace ka 3, y'Itegeko Ngenga N^{o}03/2012/OL ryo ku wa 13/06/2012 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 urubanza rudashobora kurangizwa ukurikije imikirize yarwo", naho mu gika cya kabiri ikagira iti: " Icyakora, umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko ntiyemerewe gusaba ko urubanza yatsinzwe rusubirishwamo hakurikijwe ibiteganywa mu ngingo zivugwa muri iki cyiciro".

[19] Ku byerekeye kumenya niba icyemezo cya Perezida w'Urukiko rw'Ikirenga kibuza ko habaho izindi mpaka zishingiye ku bubasha bw'Urukiko cyangwa ku iyakirwa ry'urubanza rwoherejwe n'Urwego rw'Umuvunyi kugira ngo rusubirwemo ku mpamvu z'akarengane, Urukiko rurasanga, hakurikijwe ibiteganywa n'ingingo ya 80 y'Itegeko Ngenga Nº03/2012/OL ryavuzwe haruguru, icyemezo Perezida w'Urukiko rw'Ikirenga afata cyo gutegeka ko ikirego cy'ubujurire kivuye mu rwego rw'Umuvunyi cyandikwa mu bitabo byabugenewe, ababuranyi badakwiye kubyuririraho bavuga ko ikibazo cy'ububasha cyangwa cy'iyakirwa ry'ikirego cyarangiye gufatwaho icyemezo, kuko, icyemezo kiba cyafashwe atari icyo kwakira ikirego, ko ahubwo ari icyo kucyandika mu bitabo by'Urukiko (*enregistrer un appel*); bityo ko, mu iburanisha ry'urubanza, ubifitemo inyungu wese afite uburenganzira bwo gutanga inzitizi y'iburabubasha bw'Urukiko cyangwa iyo kutakira ikirego bushingiye ku biteganywa n'ingingo ya 81 cyangwa n'izindi z'Itegeko Ngenga Nº03/2012/OL ryavuzwe haruguru, cyane cyane ko icyo cyemezo kiba cyafashwe undi muburanyi atabigizemo uruhare.

[20] Urukiko rurasanga rero icyemezo cya Perezida w'Urukiko rw'Ikirenga gitegeka ko dosiye ivuye mu rwego rw'Umuvunyi yandikwa mu gitabo cy'ibirego, kidakuraho ko, mu iburanisha ry'urubanza, haba izindi mpaka zishingiye ku bubasha bw'Urukiko ndetse no ku iyakirwa ry'ikirego, bityo inteko iburanisha ikaba ifite ububasha bwo kureba niba ikirego cy'Akarere ka Nyarugenge cyaratanzwe mu rwego rw'Umuvunyi mu buryo bukurikije amategeko.

[21] Mu guca urubanza RAD0010/12/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko kugira ngo iyimurwa ku nyungu rusange ribeho kandi byitwe ko ryubahirije amategeko, imihango iteganywa n'amategeko igomba kubahirizwa, ko iyo itubahirijwe bifatwa ko iyimurwa ku nyungu rusange ryakozwe mu buryo bunyuranyije n'amategeko, rwemeza ko iyimurwa rya Rwigara Assinapol ritakurikije amategeko kubera ko nta bimenyetso Akarere ka Nyarugenge katanze bigaragaza ko imihango iteganyijwe n'amategeko yubahirijwe nko gukoresha inama imenyesha abagomba kwimuka uko bigomba gukorwa, no kuba nta kigaragaza ko Rwigara Assinapol atishimiye amafaranga yagenewe n'Akarere nk'uko kabivuga .

[22] Nk'uko kabisobanuye mu nyandiko yohererejwe Urwego rw'Umuvunyi, Akarere ka Nyarugenge kavuga ko umukozi ushinzwe ishyinguranyandiko (archives) ari nawe washoboraga kumenya aho inyandiko zigaragaza ko Rwigara Assinapol yariyaramenyeshejwe iby'iyimurwa rye, n'ubwo yaburanye asobanura ko atari abizi, yari yaragiye kwiga hanze y'Igihugu[1].

[23] Urukiko rurasanga aho ziriya nyandiko zibonekeye, Akarere karatanze ikirego ku Rwego rw'Umuvunyi gashingiye ku ngingo ya 79, y'Itegeko N°03/2012/OL ryo ku wa 13/06/2012 kavuga ko urubanza RAD0010/12/TGI/NYGE rurimo akarengane kubera ko irangizwa ryarwo ritashoboka harebwe uburyo rwaciwemo, gasaba ko Urukiko rw'Ikirenga rwakwongera kuruburanisha ruhuza imiburanire ya Rwigara Assinapol muri urwo rubanza wavugaga ko atari azi iby'iyimurwa rye n'inyandiko zabonetse zigaragaza neza ko yari arizi, bityo imikirize y'urubanza ihinduke hashingiwe kuri ibyo bimenyetso.

[24] Ingingo ya 184 y'Itegeko N°21/2012 ryo ku wa 14/06/2012, iteganya ko "gusubirishamo urubanza ingingo nshya ni ugushaka ko urubanza rwaciwe burundu ruvanwaho hakongera gusuzumwa bundi bushya uko ibintu byagenze n'uko amategeko abiteganya". Naho ingingo ya 186, agace ka 3, y'Itegeko Ngenga N°21/2012 ryo ku wa 14/06/2012, yo iteganya ko "kuva aho urubanza ruciriwe habonetse ibimenyetso bya kamarampaka bigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo; icyo kimenyetso cyaba kiri mu nyandiko zatanzwe mu rubanza ariko urukiko ntirukibone cyangwa cyaragaragajwe nyuma".

[25] Kuba Akarere ka Nyarugenge kari kamaze kubona ibimenyetso biri muri dosiye kashyikirije Urwego rw'Umuvunyi kavuga ko bigaragaza neza ko Rwigara Assinapol yari azi neza ndetse ko yanakurikiranye ibijyanye n'iyimurwa rye bigizwe n'inyandikomvugo y'inama ya Komisiyo y'ubutaka yo ku wa 17/07/2010, iyo ku wa 23/08/2010, ibaruwa yo ku wa 17/07/2010 imumenyesha agaciro kahawe umutungo we kangana na 6.284.243Frw inamumenyesha ko niba atanyuzwe n'ako gaciro yakoresha ihinyuzagaciro (contre expertise) nk'uko biteganywa mu ngingo ya 26 y'Itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange; ibaruwa ya Rwigara Assinapol yo ku wa 02/08/2010 isubiza imaze kuvugwa haruguru isobanura ibijyanye n'igenagaciro ryakorewe umutungo we, karagombaga gutanga ikirego cyo gusubirishamo urubanza RAD0010/12/TGI/NYGE

[1] Ibyo bimenyetso bigaragaza neza ko Rwigara yari azi neza ndetse yakurikiranye ibijyanye n'iyimurwa rye ni cyane cyane inyandiko mvugo ya Komisiyo y'ubutaka yo ku wa 17/07/2010, iyo ku wa 23/08/2010, ibaruwa yo ku wa 17/07/2010 imumenyesha agaciro kahawe umutungo we kangana na 6.284.243Frw inamumenyesha ko niba atanyuzwe n'ako gaciro yakoresha ihinyuzagaciro (contre expertise) nk'uko biteganywa mu ngingo ya y'Itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange hamwe n'ibaruwa ye yo ku wa 02/08/2010 isubiza imaze kuvugwa isobanura ibijyanye n'igenagaciro ryakorewe umutungo we.
Inama idasanwe ya komisiyo y'ubutaka n'abaturage yo ku wa 17/07/2010, yari igamije kubamenyesha imyanzuro ya komisiyo y'ubutaka y'inama zabanje hagamijwe kubereka ibyavuye mu ibaruramutungo ryakozwe no kumva ibibazo byabo naho iyo ku wa 23/08/2010 igaragaza neza ko Komisiyo y'ubutaka yize ku kibazo cy'ihinyuzagaciro ryatanzwe na Rwigara ikanzura ko izabanza kugisha inama ku bijyanye n'amazu yasenye yaramaze kwishyura ba nyirayo kandi itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange rivuga ko iyo ugiye kubara umutungo ubara ibiri ku butaka ndetse n'ubutaka kandi mu gihe habaga ibaruramutungo hakaba hari gusa ubutaka.

ingingo nshya hashingiwe ku biteganywa n'ingingo ya 184 n'iya 186 z'itegeko rimaze kuvugwa haruguru.

[26] Urukiko rurasanga rero nubwo urubanza RAD0010/12/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rwarashoboraga kutarangizwa ukurikije imikirize yarwo nkuko bivugwa n'uhagarariye Akarere ndetse bikaba byaranemejwe n'Urwego rw'Umuvunyi hashingiwe ku biteganywa n'ingingo ya 81, igika cya mbere, agace ka 3, y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012, ibi bitaba impamvu yatuma ikirego cy'Akarere ka Nyarugenge gisaba gusubirishamo ruriya rubanza ku mpamvu z'akarengane cyakirwa n'Urukiko rw'Ikirenga, kuko nk'uko byasobanuwe haruguru, Akarere kashoboraga gukoresha inzira y'ubujurire iteganywa n'ingingo ya 162 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, cyangwa iyo gusubirishamo urubanza ingingo nshya iteganywa n'ingingo ya 184 n'iya 186 z'Itegeko rimaze kuvugwa, ariko ntikazikoreshe, kuba rero kararangaye kivutsa inzira zari gutuma gashobora kurenganurwa mu gihe kari kamaze kubona ibimenyetso kita ko ari bishya kari gatunze ubwako, katemerewe gusubirishamo urubanza ku mpamvu z'akarengane hashingiwe ku biteganywa n'ingingo ya 81, igika cya 2, y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru.

2. Kumenya niba amafaranga Mukandimanyi Adéline asaba yayahabwa.

[27] Me Rwagatare Janvier avuga ko ibyo Akarere ka Nyarugenge kakoze kajyana urubanza mu Rwego rw'Umuvunyi ari ibintu byo kubatesha igihe (abus de procédure) kuko bagombaga kujuririra cyangwa gusubirishamo ingingo nshya urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge, ko rero asabira Mukangemanyi Adéline aburanira 2.000.000Frw y'igihembo cya Avoka hamwe na 1.000.000Frw y'ikurikiranarubanza.

[28] Me Rubango Epimaque avuga ko nta bujurire Akarere ka Nyarugenge kakoze muri uru rukiko, ko ikirego cyaje giturutse ku rwego rw'Umuvunyi kandi iyo nzira ikaba iteganywa n'amategeko, ko rero indishyi basaba nta shingiro zifite.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse.

[30] Urukiko rurasanga kuba Akarere ka Nyarugenge gatsinzwe no kuba karatanze ikirego mu buryo bunyuranyije n'amategeko, byatumye Mukangemanyi Adéline yiyambaza umunyamategeko umuburanira agomba guhemba ndetse no gukurikirana urubanza muri uru rukiko, ariko kuba 2.000.000Frw y'igihembo cya Avoka hamwe na 1.000.000Frw y'ikurikiranarubanza Me Rwagatare Janvier amusabira nta bimenyetso ayatangira, uru rukiko rushingiye ku ngingo ya 258 imaze kuvugwa haruguru, rumugeneye mu bushishozi bwarwo 1.000.000Frw akubiyemo igihembo cya Avoka hamwe nay'ikurikiranarubanza.

III. ICYEMEZO CY'URUKIKO

[31] Rwemeje ko inzitizi yatanzwe na Mukangemanyi Adéline ifite ishingiro.

[32] Rwemeje ko ikirego cy'Akarere ka Nyarugenge cyo gusubirishamo urubanza RAD0010/12/TGI/NYGE rwaciwe ku wa 28/02/2013 n'Urukiko Rwisumbuye rwa Nyarugenge ku mpamvu z'akarengane kitakiriwe.

[33] Rwemeje ko ikirego cya Mukangemanyi Adéline gisaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka gifite ishingiro.

[34] Rutegetse Akarere ka Nyarugenge guha Mukangemanyi Adéline, 1.000.000Frw, igihembo cya Avoka n'ikurikiranarubanza.

[35] Rutegetse Akarere ka Nyarugenge kwishyura amagarama y'urubanza angana na 100.000Frw.