BUSORO v. BUSORO N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC00022/2018/SC (Rugege, P.J., Kayitesi Z., Kayitesi R., Cyanzayire na Hitiyaremye,J.) 21 Kamena 2019]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Imiburanishirize y'imanza zisubirwamo ku mpamvu z'akarengane – Inzitizi yatuma urubanza rutaburanishwa mu mizi – Inzitizi yatuma urubanza rutaburanishwa mu mizi kubw'itegeko ntabwo yakirwa ngo isuzumwe mw'iburanisha ry'ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane kuko mbere yo kugira ngo Perezida w'Urukiko rw'Ikirenga afate icyemezo ko urubanza rusubirwamo ku mpamvu z'akarengane, ibyo byose byatuma urubanza rutasuzumwa mu mizi bibanza gusuzumwa n'inzego zibishinzwe. Cyeretse umuburanyi ashoboye kugaragaza impamvu idasanzwe nko kuba harabayeho kwibeshya ku bihe byo gutanga ikirego – Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 63.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge Busoro Gervais arega umuhungu we Busoro Mugunga ko yamwambuye umutungo we ugizwe n'ikibanza kirimo inzu, awibaruzaho atabizi ubwo yari arwaye ari mu bitaro ndetse anawutangaho ingwate muri banki, nyuma aranawugurisha. Akaba yarasabaga ko ubwo bugure bwateshwa agaciro ndetse agahabwa n'indishyi zinyuranye. Busoro Mugunga we yaburanye avugaga ko inzu ari iye, ko yayiguze ubwo yari mu gisirikare, aho yohereje Se amafaranga ibihumbi magana ane (400,000Frw) nawe akamwongereraho ibihumbi ijana na mirongo itanu (150,000Frw) akayimugurira. Urwo Rukiko rwaciye urubanza rwemeza ko iyo nzu yaburanwaga Busoro Gervais yari ayifatanyije n'umuhungu we Busoro Mugunga, rwemeza ko Twagirayezu na Mukankombe bayiguze bayigumana, Busoro Mugunga agaha Se uruhare rwe ku nzu yagurishije atamumenyesheje rungana na miliyoni umunani (8.000.000Frw).

Busoro Gervais yajuririye urwo rubanza mu Rukiko Rukuru avuga ko urukiko rubanza rwemeje ko umutungo uburanwa yari awusangiye n'umuhungu we kandi ari we wawuguze ku giti cye nuwitwa Kambanda. Urwo Rukiko rwaciye urubanza rwemeza ko nta gihindutse ku rubanza rwajuririwe.

Nyuma yo kubona imikirize y'urwo rubanza Busoro Gervais yandikiye Perezida w'Urukiko rw'Ubujurire amusaba ko rwasubirwamo ku mpamvu z'akarengane, uyu nawe amaze kubisuzuma yandikira Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza RCA 00051/2017/HC/KIG rwaciwe n'Urukiko Rukuru rwasubirwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ikirenga nawe yaje kwemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Mu iburanisha ry'urwo rubanza mu Rukiko rw'Ikirenga Busoro Mugunga yatanze inzitizi avuga ko uru Rukiko nta bubasha rufite bwo kuburanisha urubanza abona rutarimo akarengane anongeraho ko Busoro Gervais nta nyungu n'ububasha afite kuko ngo nta kimenyetso afite aburanisha kirenze kubyo yavuze mu manza zabanje ngo yerekane akarengane yagiriwe, izi nzitizi zanashyigikiwe na Twagirayezu na Mukankombe(baguze inzu iburanwa).Naho Busoro Gervais we avuga ko iyo nzitizi nta shingiro ifite mu rwego rw'amategeko.

Ku bijyanye no kumenya niba umutungo ugizwe n'ikibanza kirimo inzu Busoro Gervais atari awusangiye n'umuhungu we, Busoro Gervais yavugaga ko urukiko rwemeje ko umutungo uburanwa awusangiye n'umuhungu we kandi ataribyo kuko icyo kibanza yakiguze ubwo yari akiri umwubatsi kandi ko afite abagabo babizi, yakomeje avuga ko umuhungu we yiyandikishijeho iyo nzu atabizi nyuma aza no kuyigurisha, akomeza avuga ko akarengane kagaragarira ku kuba mu rubanza rusabirwa gusubirwamo Urukiko rwaremeje ko Busoro Gervais yaguze umutungo uburanwa ku giti cye maze rurarenga rwemeza ko agomba kuwugabana n'umuhungu we.

Busoro Mugunga we yavuze ko kuko yari umusirikare atabonaga umwanya yohereje Se amafaranga kugirango amugurire inzu maze Se nawe yongera ayo mafaranga maze bafatanya kugura inzu iburanwa, nyuma Se aza kumuha uburenganzira ayibaruzaho maze aza kuyitangaho ingwate muri banki nyuma abuze ubwishyu ayigurisha Twagirayezu n'umugore we Mukankombe, ibi byose kandi ngo akaba yarabikoraga ku mugaragaro Se abizi bityo akaba abona nta karengane Se yagiriwe mu manza zabanje.

Twagirayezu n'umugore we Mukankombe bo bavugaga ko baguze umutungo uburanwa nta buryarya kuko uwabagurishije ari we wari wanditse kuri uwo mutungo ndetse bawugura ku mugaragaro n'ubuyobozi buhari ndetse ko Busoro Gervais yari yemereye umuhungu we kuwugurisha kugirango banki idateza cyamunara hakagurwa amafaranga make.

Incamake y'icyemezo: 1. Inzitizi yatuma urubanza rutaburanishwa mu mizi kubw'itegeko ntabwo yakirwa ngo isuzumwe mw'iburanisha ry'ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane kuko mbere yo kugira ngo Perezida w'Urukiko rw'Ikirenga afate icyemezo ko urubanza rusubirwamo ku mpamvu z'akarengane, ibyo byose byatuma urubanza rutasuzumwa mu mizi bibanza gusuzumwa n'inzego zibishinzwe. Cyeretse umuburanyi ashoboye kugaragaza impamvu idasanzwe nko kuba harabayeho kwibeshya ku bihe byo gutanga ikirego. Bityo inzitizi zatanzwe muri uru rubanza nta shingiro zifite mu rwego rw'amategeko.

2. Kuba Busoro Gervais yaragaragaje aho akomora umutungo uburanwa, Busoro Mugunga uvuga ko bawufatanyije, niwe ugomba kubitangira ibimenyetso, kuba rero aterekana ibyo bimenyetso umutungo uburanwa nuwa Busoro Gervais.

3. Kuba umutungo uburanwa wari wanditse kuri Busoro Mugunga byakozwe mu buryo bw'uburiganya kuko inyandiko yagaragarije abahagariye Urwego rw'Umubitsi w'impapuro mpamo z'ubutaka ari impimbano.

4. Twagirayezu na Mukankombe baguze umutungo uburanwa babikoze nta buryarya ariko uwawubagurushije yabagurishije umutungo utari uwe, bityo uwo mutungo ukaba ugomba gusubirana nyirawo Busoro Gervais.

5. Twagirayezu na Mukankombe bagomba gusubizwana na Busoro Mugunga amafaranga miliyoni cumi n'esheshatu(16,000,000Frw) yakiriye abagurisha umutungo wa Busoro Gervais.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro,
Umutungo ubaruye kuri UPI:01/03/02/03/1113 nuwa Busoro Gervais,
Rutegetse Busoro Mugunga gusubiza Twagirayezu na Mukankombe amafaranga yakiriye abagurisha umutungo wa Busoro Gervais

Amategeko yashingiweho:

Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 53, 54, 62, igika cya mbere, 63, niya 54.

Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 75

Imanza zifashishijwe:

Kayitsinga v. Kanyamibwa, RS/REV/INJUST/CIV0012/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019

Harerimana v. Sebukayire, RCAA0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Busoro Gervais arega umuhungu we Busoro Mugunga Désiré ko yamwambuye umutungo we ugizwe n'ikibanza kirimo inzu, awibaruzaho atabizi ubwo yari arwaye ari mu bitaro ndetse anawutangaho ingwate muri banki, nyuma aranawugurisha. Akaba yarasabaga ko ubwo bugure bwateshwa agaciro ndetse agahabwa n'indishyi zinyuranye. Busoro Mugunga Désiré we yavugaga ko inzu ari iye, ko yayiguze ubwo yari mu gisirikare, aho yohereje Se Busoro Gervais amafaranga ibihumbi magana ane (400.000 Frw) nawe akamwongereraho ibihumbi ijana na mirongo itanu (150.000 Frw) akayimugurira.

[2] Ku itariki ya 30/12/2016, urwo Rukiko rwaciye urubanza RC00182/2016/TGI/NYGE rwemeza ko ikirego cya Busoro Gervais gifite ishingiro kuri bimwe, ko inzu iburanwa itagombaga kugurishwa atabimenyeshejwe kuko bigaragara ko yari ayifatanyije n'umuhungu we Busoro Mugunga Désiré, rwemeza ko Twagirayezu Ildéphonse na Mukankombe Chartine bayiguze bayigumana, Busoro Mugunga Désiré agaha Se uruhare rwe ku nzu yagurishije atamumenyesheje rungana na miliyoni umunani (8.000.000Frw).

[3] Mu kwemeza ko Busoro Mugunga Désiré yari afatanyije umutungo uburanwa na Se, Urukiko rwashingiye ku mpamvu y'uko ari we wari ufite ibyemezo bya burundu by'ubutaka ndetse na *fiche cadastrale*, kuba ari we wari ufite inyandiko y'ubugure yo ku itariki ya 20/01/1999 yasinyanye na Mukarukwaya Florida wari utunze uwo mutungo mbere y'uko ugurishwa Kambanda François, kuba Busoro Mugunga Désiré ari we wagiye yishyura umusoro w'icyo kibanza, no kuba yemera ko yafatanyije na Se Busoro Gervais kugura ikibanza kiburanwa n'inzu yari ikirimo, kandi akemera ko amafaranga y'ubukode bw'inzu bayagabanaga.

[4] Busoro Gervais yajuririye urwo rubanza mu Rukiko Rukuru anenga ko rwemeje ko umutungo uburanwa yari awusangiye n'umuhungu we kandi ari we wawuguze ku giti cye na

Kambanda François. Ku itariki ya 25/05/2018, urwo Rukiko rwaciye urubanza RCA 00051/2017/HC/KIG rwemeza ko ubujurire bwa Busoro Gervais nta shingiro bufite, ko umutungo uburanwa bari bawusangiye. Mu gufata icyo cyemezo, urwo Rukiko narwo rwashingiye ku mvugo ya Busoro Mugunga Désiré wemeje ko yahaye Se ibihumbi magana ane (400.000Frw) na we akongeraho ibihumbi ijana na mirongo itanu (150.000Frw) akagura uwo mutungo. Rwavuze kandi ko kuba Busoro Gervais ataratambamye ubwo Busoro Mugunga Désiré yibaruzagaho umutungo uburanwa bigaragaza ko uwo mutungo bari bawusangiye, ko ahubwo ubu bashobora kuba bashaka kuwisubiza.

[5] Busoro Gervais amaze kubona urwo rubanza, yandikiye Perezida w'Urukiko rw'Ubujurire amusaba ko rwasubirwamo ku mpamvu z'akarengane, uyu nawe amaze kubisuzuma yandikira Perezida w'Urukiko rw'Ikirenga amusaba ko urubanza RCA 00051/2017/HC/KIG rwaciwe n'Urukiko Rukuru rwasubirwamo ku mpamvu z'akarengane.

[6] Perezida w'Urukiko rw'Ikirenga, mu cyemezo Nº038/CJ/2018 cyo ku itariki ya 28/09/2018, yemeje ko urubanza RCA00051/2017/HC/KIG rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane, dosiye yohererezwa Ubwanditsi bw'Urukiko rw'Ikirenga, urubanza ruhabwa N°RS/INJUST/RC 00022/2018/SC.

[7] Busoro Gervais akarengane ke agashingira ku mpamvu y'uko inkiko zemeje ko umutungo uburanwa awusangiye n'umuhungu we Busoro Mugunga Désiré kandi ari uwe ku giti cye kuko abifitiye n'ibimenyetso. Asaba ko ubugure bwakozwe kuri uwo mutungo bwateshwa agaciro agasubirana umutungo we.

[8] Busoro Mugunga Désiré we avuga ko umutungo uburanwa awusangiye na Se kubera ko mu mafaranga waguzwe harimo n'uruhare rwe. Twagirayezu Ildéphonse na Mukankombe Chartine bafite uwo mutungo nyuma yo kuwugura na Busoro Mugunga Désiré, bavuga ko bawuguze nta buryarya, ko ubugure kuri wo bwagumana agaciro, ko ariko mu gihe urukiko rwabibona ukundi, mbere yo gusubiza uwo mutungo babanza bagahabwa amafaranga ahwanye n'agaciro ufite ubu nk'uko kagaragajwe n'umugenagaciro bashyizeho.

[9] Urubanza rwaburanishirijwe ku itariki ya 03/06/2019, Busoro Gervais yunganiwe na Me Manirafasha Jean Paul, Busoro Mugunga Désiré ahagarariwe na Me Ntaganda Kabare Festo, Twagirayezu Ildéphonse na Mukankombe Chartine bahagarariwe na Me Murinzi Jean de Dieu.

[10] Iburanisha ritangiye, Me Ntaganda Kabare Festo uburanira Busoro Mugunga Désiré, yatanze inzitizi avuga ko Urukiko rw'Ikirenga nta bubasha rufite bwo kuburanisha urubanza abona rutarimo akarengane. Yatanze n'indi nzitizi asaba ko ikirego cy'akarengane cyatanzwe na Busoro Gervais kitakwakirwa ngo kuko nta nyungu n'ububasha afite. Izo ntizitizi zashyigikiwe na Me Murinzi Jean de Dieu uburanira Twagirayezu Ildéphonse na Mukankombe Chartine, ariko Me Manirafasha Jean Paul uburanira Busoro Gervais, we avuga ko izo nzitizi nta shingiro zifite mu rwego rw'amategeko.

[11] Ibibazo by'ingenzi byasuzumwe muri uru rubanza, ni ukumenya niba inzitizi zatanzwe zifite ishingiro, kumenya niba umutungo uburanwa Busoro Gervais atari awufatanyije n'umuhungu we Busoro Mugunga Désiré, no kumenya amafaranga agomba gusubizwa Twagirayezu Ildéphonse na Mukankombe Chartine n'ugomba kuyabasubiza.

II.IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

II.I. Kumenya niba Urukiko rw'Ikirenga nta bubasha rufite kuri uru rubanza no kumenya niba nta nyungu n'ububasha Busoro Gervais afite muri uru rubanza.

[12] Me Ntaganda Kabare Festo uburanira Busoro Mugunga Désiré, yatanze inzitizi avuga ko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha uru rubanza kuko Busoro Gervais nta kimenyetso afite aburanisha kirenze ku byo yavuze mu manza za mbere ngo yerekane akarengane yagiriwe, ko kuba atarishimiye imikirize y'urubanza rwaciwe bitamuha uburenganzira bwo gusubirishamo urubanza ku mpamvu z'akarengane, mu gihe atavuga niba hari amategeko cyangwa ibimenyetso byirengagijwe.

[13] Asobanura ko Busoro Gervais yatakambiye Urukiko rw'Ubujurire avuga ko yagiriwe akarengane, nyamara ntiyagaragaza ako karengane, ntiyagira n'ikimenyetso atanga cyiyongera ku byo yari yaratanze mbere, agasanga Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha urubanza rutarimo akarengane. Avuga ko ashingiye ku ngingo ya 3 n'iya 129 z'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ikirego cya Busoro Gervais kitakwakirwa kubera ko nta nyungu n'ububasha afite muri uru rubanza mu gihe atagaragaje akarengane afite ashingiye ku byo amategeko ateganya.

[14] Me Murinzi Jean de Dieu uburanira Twagirayezu Ildéphonse na Mukankombe Chartine, avuga ko nabo bafite impungenge zo kuba Busoro Gervais wareze avuga ko yarenganye nyamara akaba atabasha kugaragaza akarengane ke, uretse kuvuga gusa ngo yiguriye inzu umuhungu we arayigurisha. Avuga ko ikirego kiramutse cyakiriwe kandi atari icy'akarengane amategeko yaba yishwe.

[15] Me Manirafasha Jean Paul wunganira Busoro Gervais, avuga ko inzitizi itangwa na bagenzi be nta shingiro ifite, kubera ko ikirego cyabo bagitanze bashingiye ku ngingo ya 55, igika cya kabiri, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iyo ngingo ikaba iteganya impamvu zituma urubanza rushobora gusubirwamo ku mpamvu z'akarengane, akaba atumva aho bahera batanga izo nzitizi.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 62, igika cya mbere, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko iyo Perezida w'Urukiko rw'Ikirenga asuzumye raporo yashyikirijwe ku rubanza rw'akarengane, akemeza ko rwongera kuburanishwa, ayohereza Umwanditsi Mukuru w'Urukiko rw'Ikirenga kugira ngo urwo rubanza rushyirwe kuri gahunda y'iburanisha cyangwa akarwohereza mu rundi rukiko nk'uko bivugwa mu ngingo ya 53 y'iri tegeko[1]. Naho ingingo ya 63 y'iryo tegeko, iteganya ko iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo

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[1] Igika cya kabiri cy'ingingo ya 53 giteganya ko Perezida w'Urukiko rw'Ikirenga ashobora kugena urundi rukiko rwisumbuye ku rwaciye urubanza ku rwego rwa nyuma kugira ngo ruruburanishe ku rwego rw'akarengane iyo asanze urwo rubanza nta murongo wihariye rwatanga ku zindi nkiko.

ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe.

[17] Kugira ngo idosiye igere kwa Perezida w'Urukiko rw'Ikirenga isaba ko urubanza rusubirwamo ku mpamvu z'akarengane, igomba kubanza gusuzumwa n'izindi nzego hakurikijwe ibiteganywa n'ingino ya 54 y'Itegeko rimaze kuvugwa. Izo nzego ni Umuvunyi, Perezida w'Urukiko wasuzumye urubanza akarubonamo akarengane, umuburanyi ku giti cye ku rubanza rwaciwe n'Urukiko rw'Ubujurire n'Umugenzuzi Mukuru w'inkiko. Abo bantu bose rero, mbere yo kugira ngo bohereze dosiye kwa Perezida w'Urukiko rw'Ikirenga, baba babanje kuyisesengura bakareba niba ibiteganywa n'amategeko byuzuye kugira ngo urubanza rube rwasubirwamo ku mpamvu z'akarengane.

[18] Isesengura ry'ingingo ya 62 yavuzwe haruguru, ryumvikanisha neza ko mbere yo kugira ngo Perezida w'Urukiko rw'Ikirenga afate icyemezo ko urubanza rusubirwamo ku mpamvu z'akarengane, aba yasuzumye neza raporo yashyikirijwe n'inzego zibishinzwe zavuzwe haruguru. Iyo asanze nta nzitizi yatuma urubanza rutaburanishwa mu mizi, ategeka ko urubanza rwongera kuburanishwa, ari nayo mpamvu ingingo ya 63 yavuzwe haruguru, iteganya ko Urukiko rusabwe gusubiramo urubanza ku mpamvu z'akarengane ruruburanisha mu mizi. Mu kubiteganya gutyo, umushingamategeko yumvaga ko ibirebana n'inzitizi biba byarangije gusuzumwa, bityo kuri uru rwego akaba nta nzitizi iba igomba gutangwa. Cyeretse umuburanyi ashoboye kugaragaza impamvu idasanzwe nko kuba harabayeho kwibeshya ku bihe byo gutanga ikirego.

[19] Hashingiwe ku mategeko no ku bisobanuro bimaze gutangwa, Urukiko rwasanze inzitizi zatanzwe muri uru rubanza nta shingiro zifite mu rwego rw'amategeko, maze rutegeka ko iburanisha ry'urubanza rikomeza.

Kumenya niba umutungo uburanwa ugizwe n'ikibanza kirimo inzu Busoro Gervais atari awusangiye n'umuhungu we Busoro Mugunga Désiré

[20] Me Manirafasha Jean Paul wunganira Busoro Gervais, avuga ko impamvu yatumye basaba ko urubanza RCA00051/2017/HC/KIG rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane ari uko urukiko rwemeje ko umutungo uburanwa Busoro Gervais awusangiye n'umuhungu we Busoro Mugunga Désiré, kandi ataribyo kuko icyo kibanza cyarimo inzu yakiguze ku gite cye na Kambanda François ku mafaranga yakoreye ubwo yari umwubatsi, arangije iyo nzu arayisana. Avuga ko afite abagabo babizi n'Urukiko rubakeneye rwababahamagaza.

[21] Mu myanzuro ya Busoro Gervais yo gusubirishamo urubanza ku mpamvu z'akarengane, asobanura ko nyuma yo kugura iyo nzu, umuhungu we Busoro Mugunga Désiré yayiyandikishijeho atabizi nyuma aza no kuyigurisha, kandi nta ruhare yigeze agira mu kuyigura. Avuga ko yamureze mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko rwatesha agaciro amasezerano y'ubugure bwabaye kuri icyo kibanza n'inzu kuko abakiguze aribo Twagirayezu Ildéphonse na Mukankombe Chartine banakibarujeho, ariko Urukiko ruranga rwemeza ko iyo nzu yari ayifatanyije n'umuhungu we, maze rutegeka ko ahabwa kimwe cya kabiri (½) cy'amafaranga iyo nzu yagurishijwe gihwanye n'uruhare rwe, runategeka ko abaguze iyo nzu bayigumana. Avuga ko icyo cyemezo yakijuririye Urukiko Rukuru narwo aba aricyo

rugumishaho mu rubanza RCA00051/2017/HC/KIG rwaciwe ku itariki ya 25/05/2018, akaba ariyo mpamvu yasabye ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

[22] Me Manirafasha Jean Paul wunganira Busoro Gervais, akomeza avuga ko akarengane kari mu rubanza rusabirwa gusubirwamo kagaragarira mu gika cya 15 cyarwo, aho Urukiko rwemeje ko Busoro Gervais yaguze umutungo ku giti cye ntawe bafatanyije, nyamara rurarenga rufata icyemezo cy'uko agomba kugabana inzu n'umuhungu we, kandi uyu we yari yariyemereye ko igurwa atari ahari.

[23] Busoro Mugunga Désiré mu myanzuro ye, avuga ko inzu ariwe wayiguze, ariko kuko yari umusirikari atabonaga umwanya, yohereje Se amafaranga ibihumbi magana ane (400.000 Frw) ngo amugurire inzu, Se nawe ashyiraho ibihumbi ijana na mirongo itanu (150.000Frw) maze bafatanya kuyigura. Avuga ko nyuma Se yaje kuyimuhaho uburenganzira akayibaruzaho kugira ngo abana ba mukuru we batazayimuburanya mu gihe yaramuka apfuye, ibyo ngo akaba ari byo byatumye anayitangaho ingwate muri banki, maze abuze ubwishyu ayigurisha na Twagirayezu Ildéphonse n'umugore we Mukankombe Chartine. Avuga ko atayigurishije rwihishwa kuko ibyo yakoraga byose Se yabaga abizi kubera ukuntu bari babanye neza, akabona nta karengane yagiriwe mu manza zabanje.

[24] Me Ntaganda Kabare Festo, avuga ko Busoro Mugunga Désiré avuye mu butumwa bwa gisirikare yari arimo, yagiye inama na Se yo kugura inzu, amuha amafaranga ibihumbi magana ane (400.000Frw), Se nawe arashakisha abona ibihumbi ijana na mirongo itanu (150.000Frw) yongeraho bagura inzu y'ibihumbi magana atanu na mirongo itanu (550.000Frw), igurwa na Busoro Gervais kuko Busoro Mugunga Désiré yari ari mu kazi. Avuga kuba Busoro Mugunga Désiré yarashobore kugurisha uwo mutungo ari uko yari yarawiyandikishijeho, ko kandi kugira ngo ibyo bikorwe, nyuma yo kubura Kambanda François wari warawubagurishije, yagiye inama na Se bashaka uwitwa Mukarukwaya Frolida wigeze nawe gutunga icyo kibanza bahimba amasezerano aba ari yo bajyana mu Kigo cy'Igihugu gishinzwe ubutaka.

[25] Me Murinzi Jean de Dieu uburanira Twagirayezu Ildéphonse na Mukankombe Chartine, avuga ko bo baguze nta buryarya kuko uwabagurishije ari we wari wanditse ku mutungo. Avuga ko bagura babonaga uwo mutungo nta bibazo ufite, dore ko Busoro Mugunga Désiré wawubagurishije yari awufitiye ibyangombwa byose, kandi bakaba baraguze ku mugaragaro n'ubuyobozi bw'inzego z'ibanze buhari bukabasinyira, ko ndetse na Busoro Gervais yari abizi kuko ari we wemereye umuhungu we kugurisha kugira ngo banki idateza cyamunara hakagurwa amafaranga make.

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[26] Ingingo ya 3 y'Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Umucamanza ashobora nyamara gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite.

[27] Urukiko rurasanga mu kwemeza ko umutungo uburanwa ugizwe n'ikibanza n'inzu yubatseho Busoro Gervais yari awusangiye n'umuhungu we, Urukiko Rukuru rwashingiye ku miburanire ya Busoro Mugunga Désiré wavuze ko yahaye Se amafaranga ibihumbi magana ane

(400.000Frw) nawe akongeraho ibihumbi ijana na mirongo itanu (150.000Frw), rubihuza n'ibyavuzwe n'umutangabuhamya Kambanda François wavuze ko yagurishije Busoro Gervais uwo mutungo ku bihumbi magana atanu na mirongo itanu (550.000Frw), rwanzura ko ubwo bawufatanyije. Iyo kandi ni nayo yakomeje kuba imiburanire ya Busoro Mugunga Désiré n'imbere y'uru rukiko.

[28] Dosiye y'urubanza igaragaza ko ubwo ku itariki ya 30/01/2016, abagize inama rusange y'Umudugudu wa Cyeza bagezwagaho ikibazo cy'amakimbirane yari hagati ya Busoro Gervais n'umuhungu we Busoro Mugunga Désiré ku birebana n'umutungo uburanwa, bose bemeje ko bazi ko uwo mutungo ari uwa Busoro Gervais, basaba inzego zibishinzwe kumurenganura agasubizwa uburenganzira kuri uwo mutungo. Dosiye igaragaza kandi ko umutangabuhamya Kambanda François yabajijwe mu Rukiko Rukuru uwo baguze umutungo, akavuga ko ari Busoro Gervais.

[29] Urukiko rurasanga kuba Busoro Gervais yaragaragaje aho akomora umutungo uburanwa, Busoro Mugunga Désiré uvuga ko bawufatanyije, niwe ugomba kubitangira ibimenyetso hashingiwe ku biteganywa n'ingingo ya 3 y'Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru. Kuba rero aterekana ibyo bimenyetso uretse kubivuga mu magambo gusa, urukiko rurasanga umutungo uburanwa ari uwa Busoro Gervais ku giti cye. Kuba wari wanditse kuri Busoro Mugunga Désiré, Urukiko rurasanga byarakozwe mu buryo bw'uburiganya kuko inyandiko yagaragarije abahagariye Urwego rw'Umubitsi w'impapuro mpamo z'ubutaka ari impimbano, nk'uko n'umuburanira yabyiyemereye imbere y'uru rukiko ko bashatse uwitwa Mukarukwaya Florida bagahimba amasezerano y'ubugure.

[30] Ku birebana n'ubugure bwabaye hagati ya Busoro Mugunga Désiré na Twagirayezu Ildéphonse n'umugore we Mukankombe Chartine ku mutungo uburanwa, Urukiko rurasanga abaguze barabikoze nta buryarya kubera ko Busoro Mugunga Désiré yaberekaga ko ari we nyiri umutungo abigaragariza n'ibyangombwa. Urukiko rurasanga ariko ubwo bugure ari imfabusa kubera ko, nk'uko bimaze gusobanurwa haruguru, Busoro Mugunga Désiré yabagurishije umutungo utari uwe, bityo uwo mutungo ukaba ugomba gusubirana nyirawo ari we Busoro Gervais, amaseserano y'ubukode burambye N° UPI:01/03/02/03/1113 yahawe Twagirayezu Ildéphonse n'umugore we Mukankombe Chartine akaba ateshejwe agaciro kugira ngo umutungo ushobore kwandikwa kuri Busoro Gervais.

[31] Ku birebana n'ikirego kiregera kwiregura cyatanzwe na Busoro Mugunga Désiré asaba ko mu gihe urukiko rwasanga ari ngombwa ko agabana na Se Busoro Gervais buri wese yahabwa umugabane uhwanye n'ikiguzi yatanze ku mutungo uburanwa, Urukiko rurasanga atari ngombwa gusuzuma iki kibazo kubera ko rwasanze batagomba kugabana kuko utungo ari uwa Busoro Gervais ku giti cye.

II.2 Kumenya agaciro k'ibikorwa Twagirayezu Ildéphonse na Mukankombe Chartine bakoze ku mutungo uburanwa n'ufite inshingano zo kubasubiza agaciro kabyo.

[32] Me Murinzi Jean de Dieu uburanira Twagirayezu Ildéphonse na Mukankombe Chartine, avuga ko, n'ubwo batemera ko umutungo ari uwa Busoro Gervais, urukiko ruramutse rubibonye ukundi, rwategeka ko Twagirayezu Ildéphonse na Mukankombe Chartine basubizwa amafaranga ahwanye n'agaciro umutungo wabo ufite uyu munsi kubera ko basanga ari nk'ikinamico Busoro

Gervais n'umuhungu we bashaka gukina kugira ngo bigarurire umutungo barangije kugurisha bitewe ni uko babona uyu munsi agaciro k'ubutaka kariyongereye cyane. Avuga ko amafaranga basaba ari 25.387.040Frw yagaragajwe n'umugenagaciro, kandi bakayahabwa mbere y'uko basubiza uwo mutungo, akavuga ko uyu ariwo murongo watanzwe n'uru Rukiko mu rubanza RCAA0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014, aho rwategetse ko Harerimana Emmanuel waburanaga ahagarariye Harerimana Gaspard, mbere yo gusubizwa umutungo, abanza gusubiza ibyo Sebukayire Tharcisse baburanaga yari yarongereye ku mutungo yari atunze nta buryarya.

[33] Mukankombe Chartine yabajijwe niba bamaze kugura inzu hari ikindi kintu bayikozeho, asubiza ko bayiteye amarangi, ko agereranyije byabatwaye amafaranga agera ku bihumbi magana atatu na mirongo itanu (350.000Frw).

[34] Busoro Gervais n'umwunganizi we Me Manirafasha Jean Paul, basaba ko iyo raporo bavuga yakozwe n'umugenagaciro itazashingirwaho kubera ko ntayo babonye ngo bagire icyo bayivugaho, ko uretse n'ibyo kandi, itegeko rivuga ko ushubije umutungo yabonye nta buryarya asubizwa agaciro k'ibyo yongeyeho, atari agaciro umutungo ufite. Bavuga ko kuva Twagirayezu Ildéphonse na Mukankombe Chartine bagura iyo nzu nta kintu na kimwe bigeze bayikoraho, cyane cyane ko batagaragaza icyangombwa cyabemereraga kuvugurura kubera ko n'Ubuyobozi bwari bwarabangiye. Bavuga ko n'ibihumbi magana atatu na mirongo itanu (350.000Frw) Mukankombe Chartine avuga bakoresheje batera amarangi atari byo kuko nta bimenyetso abitangira kubera ko nta marangi bateye.

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[35] Ku birebana no kumenya niba raporo y'umugenagaciro yashyizwe muri *system* ku munsi w'iburanisha yashingirwaho, ingingo ya 75 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko muri rusange nta nyandiko, imyanzuro y'urubanza cyangwa inyandiko ikubiyemo ingingo ziburanishwa bishobora kohererezwa urukiko nyuma y'inama ntegurarubanza. Iyo ngingo ikomeza ivuga ko iyo habonetse inyandiko cyangwa se ikindi kintu gishya cyafasha mu kugaragaza ukuri kivumbuwe n'umwe mu baburanyi, ashobora kugishyikiriza urukiko, rugasuzuma niba cyakwakirwa.

[36] Hakurikijwe imiterere y'iyi dosiye, hashingiwe ku ngingo ya 75 y'Itegeko N°22/2018 rimaze kuvugwa, nyuma yo gusuzuma raporo y'umuhanga yageze muri dosiye ku itariki ya 03/06/2019 umunsi w'iburanisha, Urukiko rurasanga itakwakirwa kuko urundi ruhande rutayibonye ngo rugire icyo ruyivugaho.

[37] Mu rubanza RS/REV/INJUST/CIV0012/15/CS rwaciwe ku itariki ya 18/01/2019, Urukiko rw'Ikirenga rwemeje ko uvanywe mu mutungo yarawongereye agaciro ugasubizwa nyirawo, uyu agomba kwishyura ibikorwa byawushyizweho bigatuma umutungo wiyongera[2].

[2] Urubanza RS/REV/INJUST/CIV0012/15/CS, igika cya 49 n'icya 50. Haburanaga Kayitsinga Alexis na Kanyamibwa Immaculée, Nsanzineza Célestin arugobokeshwamo.

Uyu murongo kandi ninawo uri mu rubanza RCAA0018/13/CS[3] rwaciwe n'Urukiko rw'Ikirenga Twagirayezu Ildéphonse na Mukankombe Chartine basaba ko wakurikizwa. Ku birebana n'uru rubanza, Urukiko rurasanga nta kimenyetso na kimwe Twagirayezu Ildéphonse na Mukankombe Chartine batanga cyerekana ko nyuma yo kugurishwa na Mugunga Busoro Désiré ikibanza kirimo inzu hari icyo bashyize kuri uwo mutungo cyawongereye agaciro kugira ngo babe basubizwa amafaranga ahwanye n'agaciro kacyo nk'uko byagenze mu manza zimaze kuvugwa, n'amarangi Mukankombe Chartine avuga bateye akaba nta bimenyetso abitangira kandi Busoro Gervais avuga ko ntabyakozwe.

[38] Hashingiwe ku bimaze kuvugwa, Twagirayezu Ildéphonse na Mukankombe Chartine bagomba gusubizwa amafanga baguze uwo mutungo gusa. Urukiko rurasanga Mugunga Busoro Désiré ariwe ugomba kubasubiza amafaranga miliyoni cumi n'esheshatu (16.000.000Frw) yakiriye abagurisha umutungo wa Busoro Gervais, kubera ko yabikoranye uburiganya nk'uko byasobanuwe haruruguru.

II.3 Ku birebana n'indishyi zisabwa muri uru rubanza

[39] Busoro Gervais asaba ko urukiko rwategeka Busoro Mugunga Désiré na Twagirayezu Ildéphonse na Mukankombe Chartine bafatanyije kumwishyura amafaranga y'ikurikiranarubanza angana 1.000.000Frw kuri buri wese.

[40] Twagirayezu Ildéphonse na Mukankombe Chartine bavuga ko indishyi Busoro Gervais yaka ntazo akwiye guhabwa kuko igihe cyose ariwe wakomeje kwishora mu manza nta mpamvu, ko ahubwo ari we ukwiye kubaha indishyi z'akababaro za 1.000.000Frw kubera kubasiragiza mu manza nta mpamvu, ndetse akabaha 1.000.000Frw y'igihembo cya Avoka kuri bombi harimo n'ay'ikurikiranarubanza.

[41] Busoro Mugunga Désiré avuga ko nta ndishyi izo arizo zose Busoro Gervais akwiye gusaba kuko nta kimenyetso yigeze yerekana ko inzu aburana ari iye, ko ahubwo we akwiye gutegekwa kumwishyura amafaranga y'ikurikiranarubanza 600.000Frw, kuko ariwe wamushoye muri uru rubanza kandi nta bimenyetso afite ko yagize akarengane, no kumwishyura igihembo cya Avoka kingana na 1.000.000Frw, kuko ariwe watumye afata Avoka umukorera imyanzuro no kumwunganira mu Rukiko rw'Ikirenga.

[42] Busoro Gervais avuga ko indishyi Busoro Mugunga Désiré asaba ntazo akwiye guhabwa.

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[43] Urukiko rurasanga amafaranga y'indishyi BUSORO Gervais asaba y'ikurikiranarubanza ndetse n'ay'igihembo cya Avoka ayakwiye, akaba agomba kuyahabwa na Busoro Mugunga Désiré wenyine kubera ko ari we utsinzwe urubanza, mu bushishozi bw'urukiko akaba agenewe ibihumbi magana atanu (500.000Frw) y'igihembo cya Avoka, n'ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza, yose hamwe akaba ibihumbi magana inani (800.000Frw).

[3] Uru rubanza rwaciwe ku itariki ya 24/12/2014, haburana Harerimana Emmanuel na Sebukayire Tharcisse. Reba igika cya 28.

[44] Urukiko rurasanga indishyi Mugunga Busoro Désiré asaba ntazo agomba guhabwa kuko atsinzwe urubanza, ndetse n'izo Twagirayezu Ildéphonse na Mukankombe Chartine basaba Busoro Gervais ntazo agomba kubaha kubera ko atsinze.

III. ICYEMEZO CY'URUKIKO

[45] Rwemeje ko ikirego cyatanzwe na Busoro Gervais gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCA00051/2017/HC/KIG, rwaciwe n'Urukiko Rukuru rwa Kigali, ku itariki ya 25/05/2018, gifite ishingiro;

[46] Rwemeje ko urubanza RCA00051/2017/HC/KIG, rwaciwe n'Urukiko Rukuru rwa Kigali, ku itariki ya 25/05/2018, ruhindutse mu ngingo zarwo zose;

[47] Rwemeje ko amasezerano y'ubukode burambye afite N° UPI:01/03/02/03/1113 yahawe Twagirayezu Ildéphonse na Mukankombe Chartine ateshejwe agaciro;

[48] Rwemeje ko umutungo ugizwe n'ikibanza kibaruye kuri UPI:01/03/02/03/1113 ari uwa Busoro Gervais, ukaba ugomba kumwandikwaho, kubera ko amasezerano y'ubukode burambye kuri icyo kibanza ateshejwe agaciro;

[49] Rutegetse Busoro Mugunga Désiré gusubiza Twagirayezu Ildéphonse na Mukankombe Chartine amafaranga 16.000.000Frw;

[50] Rutegetse Busoro Mugunga Désiré guha Busoro Gervais amafaranga ibihumbi magana inani (800.000Frw) akubiyemo igihembo cya Avoka n'ay'ikurikiranarubanza.