

NTAGANZWA v MUNYANTORE N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00002/2019/SC (Ntezilyayo, P.J, Nyirinkwaya, Cyanzayire, Rukundakuvuga, na Hitiyaremye, J.) 28 Gashyantare 2020]

Amategeko agenga imanza z'imbonezamubano – Cyamunara – Kwegukana umutungo uguzwe muri cyamunara – Mu gihe uberewemo umwenda yitabiriye cyamunara y'igurisha ry'umutungo w'umubereyemo umwenda akaba ari we uyitsindira, ntibimuhesha uburenganzira bwo kuwegukana atishyuye ikiguzi yitwaje umwenda aberewemo, kuko iyo yitabiriye iyo cyamunara afatwa nk'abandi baguzi bose.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kacyiru Ntaganzwa arega Umuhesha w'Inkiko Munyantore ndetse na Uwitonze, asaba Urukiko ko rwatesha agaciro cyamunara y'inzu ye kubera ko yakozwe mu buryo bunyuranije n'amategeko kuko inzu ye yateshejwe agaciro, ko imihango yo gutangaza cyamunara y'inzu ye itakozwe kuko nta matangazo yamanitswe kandi ko amafaranga yavuye muri cyamunara atashyizwe kuri konti y'urukiko nk'uko amategeko abiteganyaga. Urukiko rw'Ibanze rwafashe icyemezo rwemeza ko ikirego cye nta shingiro gifite ko cyamunara yakozwe ikurikije amategeko.

Urega ntiyishimiye imikirize y'Urukiko ajuririra Urukiko Rwisumbuye rwa Gasabo narwo rwemeza ko bujirire bwe nta shingiro bufite kuko Urukiko rw'Ibanze rwagaragaje ko cyamunara yabaye yakurikije amategeko, rushingiye kubimenyetso rwahawe.

Urega ntiyishimiye imikirize y'urubanza maze yandikira Perezida w'Urukiko Rukuru asaba ko rwasubirwamo kumpamvu z'akarengane, Perezida amaze kubisuzuma yandikira Perezida w'Urukiko rw'Ikirenga avuga ko rushobora kuba rurimo akarengane ko byasuzumwa; Perezida w'Urukiko rw'Ikirenga yemeza ko urubanza rusubirwamo ku mpamvu z'akarengane.

Urubanza rwo gusubirishamo ku mpamvu z'akarengane rwaburanishirijwe mu Rukiko rw'Ikirenga, aho Ntaganzwa yavuze ko Urukiko Rwisumbuye rwasuzumye agaciro nyakuri k'umutungo nk'uko kari kemejwe mu rubanza rwasabirwaga kurangizwa ahubwo abaregwa bumvikanye n'umugenagaciro batesha agaciro inzu ye; yanavuze ko cyamunara itamenyekanishijwe mu buryo bukurikije amategeko kuko itangazo rya cyamunara ritamanitswe ahategetswe hose nk'uko bigaragazwa nibimenyetso batanze, asoza avuga kandi ko Uwitonze yegukanye inzu ya Ntaganzwa mu buryo bunyuranije n'amategeko kuko Munyantore yafashe inzu ye ayiha Uwitonze atayiguzwe muri cyamunara kuko ntakigaragaza aho yishyuye ikiguzi cy'inzu nk'uko biteganywa n'amategeko.

Abaregwa bavugaga ko ibyo urega avugaga ko umutungo we wateshejwe agaciro bafatanije n'impuguke ataribyho kuko iyo mpuguke yashyizweho na Perezida w'Urukiko rw'Ibanze bo ntaho bahuriye nawe, naho kugaciro avugaga ko kari karagenwe mu rubanza rwarangizwaga ataribyho kuko iryo genagaciro ariwe ubwe wariyikoreshereje akaritanga mu Rukiko ntaho Urukiko rwigeze rurisaba cyangwa ngo rurishingireho, kubijyanye no kuba cyamunara itamenyekanishijwe mu buryo bukurikije amategeko bavuze ko ataribyho kuko byose byakozwe ndetse akaba ariyo mpamvu yanitabiriye inshuro enye zose, ku kuba urega avugaga kandi ko Uwitonze yegukanye inzu mu buryo bunyuranije n'amategeko nabyo sibyo kuko Uwitonze nawe yari yemerewe gupiganwa nk'abandi akaba yari kuri liste y'abapiganwa akaba ari nawe watanze amafaranga menshi kurusha abandi bitabiriye cyamunara.

Incamake y'icyemezo: 1. Mu gihe uberewemo umwenda yitabiriye cyamunara y'igurisha ry'umutungo w'umubereyemo umwenda akaba ari we uyitsindira, ntibimuhesha uburenganzira bwo kuwegukana atishyuye ikiguzi yitwaje umwenda aberewemo, kuko iyo yitabiriye iyo cyamunara afatwa nk'abandi baguzi bose. Bityo kuba Uwitonze yaregukanye inzu ya Ntaganzwa mu buryo bunyuranyije n'amategeko kuko yayegukanye nta bwishyu atanze yitwaje umwenda aberewemo bikaba ari impamvu ituma cyamunara iseswa.

2. Mu gihe imenyekanisha rya cyamunara ritubahirije ibiteganya n'amategeko, cyamunara igomba guseswa kuko iba yakozwe mu buryo bunyuranyije n'amategeko.

**Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro;
Imikirize y'urubanza rwasabiwe gusubirirwamo ihindutse kuri byose.**

Amategeko yashingiweho :

Itegeko N° 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko, ingingo ya 60
Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza
z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 147, 263, 295,
306, 307, 312 n'ya 315

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA:

[1] Mu rubanza RCA 0175/15/HC/KIG rwaciwe ku wa 30/12/2015, Uwitonze Innocent yaregagamo Ntaganzwa Faustin na Kabahire Louise asaba ko bategekwa kumuha inzu baguze iri mu kibanza gifite UPI 1/02/02/05/583, kiri mu Kagari ka Nyamugali, Umurenge wa Gatsata, Akarere ka Gasabo, Umujyi wa Kigali, nk'uko babyemeranyijweho mu masezerano bakoranye ku wa 28/10/2013, Urukiko Rukuru rwanzuye ko nta bugure bwabayeho, ko icyari kigamijwe ari inguzanyo y'amafaranga yunguka (*banque Lambert*), ariko kubera ko bibujijwe bandika amasezerano agaragaza ibintu uko bitari, rutegeka Uwitonze Innocent gusubiza abo baburana icyangombwa cy'inzu, Ntaganzwa Faustin nawe akamwishyura umwenda amurimo ungana na 16.000.000 Frw.

[2] Urwo rubanza rumaze gucibwa, Umuhesha w'inkiko w'umwuga Munyantore Bonaventure yatangiye imihango yo kurangiza urubanza ku gahato kugira ngo Uwitonze Innocent yishyurwe amafaranga yatsindiye, yandikira Perezida w'Urukiko rw'Ibanze rwa Kacyiru amusaba gushyiraho impuguke yakwifashishwa mu kugena agaciro k'umutungo utimukanwa wa Ntaganzwa Faustin na Kabahire Louise uri mu kibanza cyavuzwe haruguru mu rwego rwo kurangiza urubanza RCA 0175/15/HC/KIG.

[3] Ku wa 01/04/2016, Perezida w'Urukiko rw'Ibanze rwa Kacyiru yategetse ko inzu ya Ntaganzwa Faustin na Kabahire Louise ikorerwa igenagaciro na Ir Sebakiye Théophile. Uyu

yakoze ibyo yasabwe maze muri raporo ye yo ku wa 08/04/2016, agaragaza ko inzu n'ikibanza yubatsemo bifite agaciro ka 13.033.020 Frw.

[4] Tariki ya 19/04/2016, Perezida w'Urukiko rw'Ibanze rwa Kacyiru yemeje ko uwo mutungo uzatezwa cyamunara ku wa 26/05/2016 saa ine z'amanywa, anategeka uko cyamunara izatangazwa n'aho amatangazo ya cyamunara azamanikwa.

[5] Ku itariki ya 04/08/2016, Umuhesha w'inkiko Munyantore Bonaventure yakoze inyandikomvugo ya cyamunara igaragaza ko cyamunara yabaye uwo munsu kandi ko inzu yegukanywe na Uwitonze Innocent (ari nawe wari ubereyemo umwenda waburanyweho mu rubanza rwarangizwaga) kuko ariwe watanze igiciro cya 16.500.000 Frw kiri hejuru mu bapiganwa umunani bari bayitabiriye, ndetse ku wa 04/01/2017 inzu iva mu maboko ya Ntaganzwa Faustin, ihabwa Uwitonze Innocent.

[6] Ku wa 13/06/2017, Ntaganzwa Faustin yatanze ikirego mu Rukiko rw'Ibanze rwa Kacyiru asaba ko cyamunara iteshwa agaciro kubera ko yakozwe mu buryo bunyuranyije n'amategeko. Mu kirego cye yavugaga ko:

Umuhesha w'inkiko Munyantore Bonaventure na Uwitonze Innocent bumvikanye n'impuguke Sebakwiye Théophile, inzu bayitesha agaciro, ntibanamumenyesha iryo genagaciro ryatesheje inzu ye agaciro;

Icyemezo gishyiraho impuguke, Munyantore Bonaventure yakibonye ku wa 12/04/2016 kandi bigaragara ko *expertise* yakozwe ku wa 08/04/2016, hakibazwa ukuntu yaba yarakozwe mbere y'uko icyemezo cy'Urukiko kiboneka;

Umuhesha w'inkiko ntabwo yubahirije amategeko agenga imihango yose ya cyamunara kuko amatangazo amenyesha ko hari cyamunara ku itariki ya 04/08/2016 atamanitswe ahategetswe hose;

Hari abantu baje muri cyamunara ibanziriza iya 04/08/2019, Munyantore Bonaventure yanga kubandika, ahubwo yandika aba *commissionaires* bazanywe na Uwitonze Innocent, ari nabo yandukuye mu nyandikomvugo ya cyamunara yo ku wa 04/08/2019;

Amafara yavuye muri cyamunara ntabwo yashyizwe kuri konti y'Urukiko.

[7] Ku wa 09/02/2018, Urukiko rw'Ibanze rwa Kacyiru rwaciye urubanza RC 00411/2017/TB/KCY, rwemeza ko ikirego cya Ntaganzwa Faustin nta shingiro gifite kuko cyamunara yakurikije amategeko hakurikijwe ibimenyetso rwahawe.

[8] Mu gufata icyo cyemezo, Urukiko rwavuze ko umuhanga wakoze igenagaciro yashyizweho n'Urukiko ku buryo Ntaganzwa Faustin adashobora kuvuga ko atarimenyeshejwe cyangwa ngo avuge ko ryakozwe ku buriganya bwa Munyantore Bonaventure na Uwitonze Innocent kuko ntaho bahuriye naryo, cyane cyane ko n'amafara yatanze muri cyamunara yarenze avugwa muri iryo genagaciro.

[9] Urukiko rwavuze kandi ko ibivugwa na Ntaganzwa Faustin ko raporo y'impuguke yabonetse mbere y'icyemezo kimushyiraho atari ukuri kuko yashyizweho ku wa 01/04/2016, hanyuma raporo ye isohoka ku wa 08/04/2016.

[10] Ku birebana n'itangazo rya cyamunara, rwavuze ko bigaragara muri dosiye ko yamanitswe ahategetswe hose, naho ku birebana n'uko amafaranga yaguze inzu atanyuze kuri konti y'Urukiko, rwavuze ko nubwo biteganywa n'itegeko, bitari ngombwa kuko uwagombaga kuyishyurwa ari nawe watsindiye inzu yagombaga kuvamo ubwishyu.

[11] Ntaganzwa Faustin yajuriye mu Rukiko Rwisumbuye rwa Gasabo avuga ko Urukiko rw'Ibanze rwa Kacyiru rwirengagije ko inzu ye yapfobejwe agaciro, ndetse ko amatangazo ya cyamunara atamanitswe ahari hategetswe hose.

[12] Ku wa 17/10/2018, Urukiko Rwisumbuye rwa Gasabo, rwaciye urubanza RCA 00052/18/TGI/GSBO, rwemeza ko ubujurire bwa Ntaganzwa Faustin nta shingiro bufite kuko urukiko rubanza rwagaragaje ko cyamunara yakurikije amategeko hakurikijwe ibimenyetso rwahawe, Ntaganzwa Faustin akaba nta gishya yazanye mu bujurire kivuguruzwa ibyo rwashingiyeho, rumutegeka kwishyura Uwitonze Innocent na Munyantore Bonaventure 1.000.000 Frw y'igihembo cya Avoka.

[13] Nyuma y'uko urwo rubanza ruciye, Ntaganzwa Faustin yandikiye Perezida w'Urukiko Rukuru asaba ko rwasubirwamo ku mpamvu z'akarengane, nawe amaze gusuzuma ubusabe bwe yandikira Perezida w'Urukiko rw'Ikirenga avuga ko rushobora kuba rwarabayemo akarengane, ko byasuzumwa hakomezwa niba rwasubirishwamo ku mpamvu z'akarengane.

[14] Mu cyemezo cye 0102/CJ/2019 cyo ku wa 09/05/2019, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza RCA 00052/18/TGI/GSBO rwandikwa mu bitabo kugirango ruzongere kuburanishwa.

[15] Urubanza rwaburanishijwe mu ruhamwe ku wa 04/02/2020, Ntaganzwa Faustin ahagarariwe na Me Nzeyimana Lusinga Innocent, Munyantore Bonaventure na Uwitonze Innocent bahagarariwe na Me Twizeyimana Innocent.

[16] Me Nzeyimana Lusinga Innocent uhagarariye Ntaganzwa Faustin yaburanye avuga ko Urukiko Rwisumbuye rwa Gasabo rwirengagije ko cyamunara yakozwe mu buryo bunyuranyije n'amategeko, haba ku bijyanye n'agaciro kahawe inzu ye, haba ku bijyanye n'imenyekanisha rya cyamunara, haba ku bijyanye n'uburyo umutungo weguriwe Uwitonze Innocent atawuguze, naho Me Twizeyimana Innocent uhagarariye abaregwa avuga ko ntacyo urwo rukiko rwirengagije.

[17] Ibibazo byasuzumwe muri uru rubanza ni ibyo kumenya niba mu rubanza RCA 00052/18/TGI/GSBO, Urukiko Rwisumbuye rwirengagije ko agaciro k'inzu ya Ntaganzwa Faustin kagenwe mu buryo bunyuranyije n'amategeko; ko cyamunara itamenyekanishijwe nk'uko byari byategetswe; ko Uwitonze Innocent yeguriwe inzu ya Ntaganzwa Faustin mu buryo bunyuranyije n'amategeko.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Kumenya niba agaciro k'inzu ya Ntaganzwa Faustin karagenwe mu buryo bunyuranyije n'amategeko

[18] Me Nzeyimana Lusinga Innocent uhagarariye Ntaganzwa Faustin avuga ko Urukiko Rwisumbuye rwa Gasabo rutasuzumye agaciro nyakuri k'umutungo wagurishijwe kuko mu

rubanza RCA 0175/15/HC/KIG rwarangizwaga hemejwe ko umutungo ufite agaciro kangana na 51.720.900 Frw, ariko mu kururanga Umuhesha w'inkiko Munyantore Bonaventure afatanyije na Uwitonze Innocent n'umugenagaciro Ir Sebakwiye Théophile bakora uburiganya, bapfobya agaciro k'inzu ye, bayiha agaciro ka 13.033.020 Frw, n'iyo raporo y'igenagaciro ntibayimushyikiriza kugira ngo agire icyo ayivugaho, abe yanakoresha indi iyivuguruza mbere y'uko inzu igurishwa muri cyamunara.

[19] Avuga kandi ko mbere yo gushyiraho umugenagaciro, bagombaga kubanza kureba niba hari uwo bahuriraho bombi aho kugira ngo Uwitonze Innocent baburana washakaga gutwara inzu ye ariwe umutanga wenyine, ari nabyo byatumye apfobya agaciro k'inzu ye, nyuma bagahimba amayeri bavuga ko yaguzwe 16.500.000 Frw kugira ngo bihurirane n'umwenda wa 16.000.000 Frw yari amubereyemo, hiyongereyeho igihembo cy'umuhesha w'inkiko Munyantore Bonaventure kingana na 500.000 Frw.

[20] Me Twizeyimana Innocent uhagarariye Munyantore Bonaventure na Uwitonze Innocent avuga ko ibyo Ntaganzwa Faustin avuga ko umutungo we wateshejwe agaciro n'abo ahagarariye bafatanyije na Ir Sebakwiye Théophile bishyiriyeho ubwabo nta kuri kurimo kuko ataribo bashyizeho impuguke yagennye agaciro k'inzu, ahubwo ari Perezida w'Urukiko rw'Ibanze rwa Kacyiru wamushyizeho.

[21] Avuga kandi ko ibyo Ntaganzwa Faustin avuga ko atigeze yerekwa igenagaciro ryakozwe na Ir Sebakwiye Théophile nta gaciro byahabwa kuko nta kimenyetso na kimwe yatanze kigaragaza ko atayibonye cyangwa se ko yayisabye ntayihabwe, cyane ko cyamunara zose zagiye zisubikwa ahari kugeza ku ya nyuma, ku buryo iyo haba hari ikinyuranyije n'amategeko yari guhita akivuga cyamunara ntibe.

[22] Avuga nanone ko igenagaciro rya 51.720.900 Frw Ntaganzwa Faustin avuga ko ryirengagijwe ari ryo yakoresheje mu rubanza RCA 0175/15/HC/KIG agamije gutesha agaciro amasezerano y'ubugure yari yaragiranye na Uwitonze Innocent, ko ataryitwaza kuko ritigeze risabwa n'Urukiko.

[23] Avuga kandi ko nawe ubwe ako gaciro azi ko kadahuje n'ukuri kuko nyuma y'amasezerano y'ubugure bw'inzu yari yarakoranye na Uwitonze Innocent, kuitariki ya 05/10/2013, yayigurishije uwitwa Kamana Kanani ku mafaranga 10.000.000 nk'uko bigaragazwa n'amasezerano bashyize muri dosiye.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 263 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, mu gika cyayo cya gatatu igira iti : mbere yo guteza cyamunara umutungo wimukanwa cyangwa utimukanwa ufite agaciro kari hejuru ya miliyoni eshatu (3.000.000) z'amafaranga y'u Rwanda, umuhesha w'inkiko agomba kwiyambaza impuguke mu igenagaciro ry'umutungo. Amafaranga y'igihembo cy'impuguke yemezwa na Perezida w'urukiko watanze icyemezo cya cyamunara kandi akurwa mu mafaranga ya cyamunara.

[25] Ingingo ya 54 y'amabwiriza N° 002/2015 yo ku wa 18/05/2015 ya Perezida w'Urukiko rw'Ikirenga agenga imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nayo igira iti "haseguriwe ibiteganywa mu ngingo ya 263 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, umuhesha w'inkiko ushaka guteza cyamunara abanza gushyikiriza Perezida w'Urukiko rw'Ibanze rw'aho umutungo utezwa cyamunara uri inyandiko isaba kugena impuguke n'igihembo cyayo. Perezida agomba kuba yasubije mu gihe kitarenze iminsi icumi y'akazi. icyemezo cya Perezida ni icyemezo cy'ubuyobozi, gishobora guhindurwa igihe cyose hagaragajwe mu nyandiko ko habaye kwibeshya mu kugitanga

[26] Urukiko rurasanga ibiteganywa mu itegeko n'amabwiriza bimaze kuvugwa byarubahirijwe kuko icyemezo cya Perezida w'Urukiko rw'Ibanze rwa Kacyiru cyo ku wa 01/04/2016 kigaragaza ko ariwe washyizeho Ir Sebakwiye Théophile nk'impuguke yo kugena agaciro k'umutungo utimukanwa wa Ntaganzwa Faustin na Kabahire Louise nyuma yo kubona ibaruwa y'Umuhesha w'inkiko Munyantore Bonaventure amusaba kugena impuguke yakwifashishwa mu kugena agaciro k'uwo mutungo mu rwego rwo kurangiza urubanza RCA 0175/15/HC/KIG, bityo rero ibyo uburanira Ntaganzwa Faustin avuga ko ari Uwitonze Innocent watanze umugenagaciro Ir Sebakwiye Théophile, bikaba bitafatwaho ukuri kuko nta kibigaragaza, n'ibyo avuga ko umucamanza yagombaga gushyiraho umugenagaciro wumvikanyweho n'impande zombi bikaba nta shingiro bifite kuko ntaho itegeko cyangwa amabwiriza byagenderwagaho icyo gihe byabiteganyaga.

[27] Ku bijyanye n'ibyo uburanira Ntaganzwa Faustin avuga ko Munyantore Bonaventure na Uwitonze Innocent bafatanyije na Ir Sebakwiye Théophile bakoze uburiganya kuko inzu yari ifite agaciro ka 51.720.900 Frw kemejwe mu rubanza RCA 0175/15/HC/KIG rwarangizwaga yahawe agaciro ka 13.033.020 Frw, Urukiko rurasanga nabyo bitafatwaho ukuri kuko ukunyuranya kw'abahanga ku gaciro k'umutungo ubwabyo atari ikimenyetso cy'uburiganya, akaba nta kindi kimenyetso atanga gishyigikira imvugo ye ko habaye uburiganya mu kugena agaciro k'umutungo we.

[28] Hashingiwe ku bisobanuro byatanzwe, Urukiko rurasanga agaciro k'inzu ya Ntaganzwa Faustin karagenwe mu buryo bukurikije amategeko.

B. Kumenya niba cyamunara itaramenyekanishijwe mu buryo bukurikije amategeko

[29] Me Nzeyimana Lusinga Innocent uhagarariye Ntaganzwa Faustin avuga ko itangazo rya cyamunara ritigeze rimanikwa ahategetswe hose mu rwego rw'0 kumenyekanisha cyamunara, ibi bikaba binyuranyije n'ibyateganywaga n'ingingo ya 295 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[30] Avuga ko ibimenyetso atanga by'uko itangazo rya cyamunara ritamanitswe ahategetswe hose ari inyandiko zanditswe n'inzego zitandukanye z'aho itangazo ryagombaga kumanikwa zigaragaza ko ritamanitswe ku biro byazo, na kopi y'ikaye y'Urukiko Rwisumbuye rwa Gasabo yandikwamo inyandiko zizanywe n'abagana urwo rukiko igaragaza ko kuva tariki ya 20/07/2016 kugeza ku wa 04/08/2016 nta tangazo rya cyamunara Munyantore Bonaventure yigeze aza kumanika kuri urwo rukiko kuko iyo ayizana iba yaranditswe muri iyo kaye nk'uko andi matangazo ya cyamunara yanditswemo.

[31] Me Twizeyimana Innocent uhagarariye Munyantore Bonaventure na Uwitonze Innocent avuga ko ibyategetswe byose kubirebana n'itangazo rya cyamunara byakozwe, bituma n'abantu bitabira za cyamunara nk'uko zagiye zikurikirana kugeza ku nshuro ya kane ubwo cyamunara yakorwaga bwa nyuma, kandi ko byasuzumwe mu rubanza rusabirwa gusubirishwamo, Urukiko Rwisumbuye rwa Gasabo rusanga ibyo Ntaganzwa Faustin avuga nta shingiro bifite.

[32] Avuga kandi ko inyandiko zatanzweho ibimenyetso na Ntaganzwa Faustin, zanditswe n'abayobozi b'inzego zitandukanye zitashingirwaho hemezwa ko itangazo rya cyamunara ritamanitswe ku biro by'izo nzego kuko zitigeze zihabwa kopi yaryo mbere y'uko rimanikwa, cyane ko atariko itegeko ryabiteganyaga icyo gihe.

UKO URUKIKO RUBIBONA

[33] Cyamunara ni igurisha rikorewe mu ruhamwe hagamijwe kwegurira umutungo ugurishwa utanze amafaranga menshi kurusha abandi. Birumvikana ko ikigamijwe kitagerwaho mu gihe hatabaye kumenyekanisha cyamunara ku buryo amakuru arebana nayo agera ku bantu benshi bashoboka, ari nayo mpamvu, ku birebana na cyamunara itegegetswe n'Urukiko kugirango hishyurwe uberewemo umwenda yatsindiye mu rubanza rwabaye itegeko, Umushingamategeko yashyizeho uburyo cyamunara imenyekanishwa.

[34] Ingingo ya 295 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, mu gika cyayo cya gatatu igira iti : 'bisabwe n'uwafatiriye, kandi amaze kugenzura ko imihango yose y'ifatira yubahirijwe, Perezida w'Urukiko rw'Ibanze rw'aho icyamunara izabera, cyangwa Perezida w'Urukiko rw'Ubucuruzi mu gihe harangizwa urubanza rwaciwe n'inkiko z'ubucuruzi, agena itariki n'aho ibintu bigomba kugurishirizwa, ahantu n'uburyo amatangazo y'iyi cyamunara agomba kumanikwa. icyemezo cya Perezida w'Urukiko kigomba na none gutangazwa, nibura mu minsi cumi n'itanu (15) mbere y'uko icyamunara ikorwa, mu kinyamakuru kimwe cya Leta, byaba ngombwa kikanatangazwa no mu kindi kinyamakuru cyigenga gisomwa na benshi cyagenwe na Perezida w'Urukiko cyangwa se bigatangazwa no kuri radiyo, televiziyo cyangwa irindi koranabuhanga. Perezida w'Urukiko rw'Ibanze cyangwa Perezida w'Urukiko rw'Ubucuruzi ashobora no gushyiraho ubundi buryo bwatuma cyamunara irushaho kwamamazwa.

[35] Ku birebana na cyamunara igibwaho impaka muri uru rubanza, Perezida w'Urukiko rw'Ibanze rwa Kacyiru, ashingiye ku bubasha ahabwa n'ingingo ya 295 y'itegeko ryavuzwe, yategetse ko inzu ya Ntaganzwa Faustin na Kabahire Louise izatezwa cyamunara ku wa 26/05/2016 saa ine z'amanya, ko mu rwego rwo kuyimenyekanisha izatangazwa inshuro imwe kuri Radio Rwanda n'inshuro imwe mu Mvaho, nibura iminsi 15 mbere y'uko ikorwa kandi ko itangazo ryayo rizamanikwa mu gihe cy'iminsi 15 mbere y'uko ikorwa aha hakurikira:

Ku biro by'uturere tugize Umujyi wa Kigali;

Ku biro by'inkiko zisumbuye ziri mu Mujyi wa Kigali;

Ku biro by'inkiko z'ibanze ziri mu Karere ka Gasabo;

Ku biro by'Akagali ka Nyamugali no ku biro by'Umurenge wa Gatsata.

[36] Ku bijyanye n'aho itangazo rya cyamunara ryagombaga kumanikwa, Urukiko rurasanga mu rubanza RCA 00052/18/TGI/GSBO Urukiko Rwisumbuye rwa Gasabo rwaremeje ko ryamanitswe ahategetswe hose ntacyo rushingiyeho kuko mu cyemezo cyarwo ruvuga gusa ko Urukiko rw'Ibanze rwa Kacyiru rwerekanye ko ryamanitswe, ariko wareba urubanza rwaciwe n'urwo rukiko ugasanga narwo rubyemeza gutyo ntacyo rushingiyeho, ibi ubwabyo bikaba binyuranye n'amategeko kuko umucamanza ategetswe gusobanura amategeko n'ibimenyetso ashingiraho icyemezo cye nk'uko biteganywa mu ngingo ya 147, agace ka kabiri y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu.

[37] Ku birebana n'ibimenyetso byatanzwe na Ntaganzwa Faustin, bigizwe n'inyandiko zikurikira:

1° Ibaruwa yo ku wa 06/05/2018 y'Umunyamabanga Nshingwabikorwa w'Akagali ka Nyamugali agaragaza ko nta tangazo rya cyamunara ryigeze rimanikwa ku nyubako y'ibiro by'ako kagali;

2° Ibaruwa yo ku wa 07/05/2018 y'Umunyamabanga Nshingwabikorwa w'Umurenge wa Gatsata nawe agaragaza ko nta tangazo rya cyamunara ryigeze rimanikwa ku nyubako y'ibiro bw'uwo murenge;

3° Ibaruwa yo ku wa 15/05/2018 y'Umunyamabanga Nshingwabikorwa w'Akarere ka Nyarugenge agaragaza ko igihe cyose nta cyemezo cy'iyakira uwamanitse itangazo agaragaza, riba ritagejwe ahagenewe kumanikwa amatangazo ku biro by'ako Karere;

4° Ibaruwa yo ku wa 07/06/2018 y'Umunyamabanga Nshingwabikorwa w'Akarere ka Kicukiro nawe agaragaza ko igihe cyose nta cyemezo cy'iyakira uwamanitse itangazo agaragaza, riba ritagejwe ahagenewe kumanikwa amatangazo ku biro by'ako karere;

5° Ibaruwa yo ku wa 31/05/2018 ya Perezida w'Urukiko Rwisumbuye rwa Gasabo agaragaza ko icyemezo cy'iyakirwa ry'itangazo rya cyamunara cyabazwa uwarizanye kuko gishyirwa kuri kopi uwazanye itangazo asubirana;

6° Ibaruwa yo ku wa 03/05/2018 ya Visi-Perezida w'Urukiko Rwisumbuye rwa Nyarugenge agaragaza ko uvuga ko itangazo ya cyamunara ryakiriwe agomba kugaragaza ko Urukiko rwaryakiriye mbere y'uko rimanikwa.

7° Ibaruwa yo ku wa 08/05/2018 ya Perezida w'Urukiko rw'Ibanze rwa Kacyiru agaragaza ko amakuru y'uko itangazo rya cyamunara ryaba ryaramanitse kuri urwo rukiko yabazwa uvuga ko yarimanitse;

8° Ikaye y'Urukiko Rwisumbuye rwa Gasabo yandikwamo inyandiko zakiriwe muri urwo rukiko, igaragaza ko mu nyandiko rwashyikirijwe guhera ku wa 20/07 kugeza ku wa 04/08/2016, nta na hamwe hagaragaramo itangazo ryaba ryarazanywe na Munyantore Bonaventure, nyamara igaragaramo amatangazo ya cyamunara yazanywe n'abandi bahesha b'inkiko.

Urukiko rurasanga izo nyandiko n'iyokaye y'urukiko bigaragaza ko uvuga ko yamanitse itangazo yagombye kubitangira ibimenyetso, kuba rero abaregwa, usibye kuvuga ko ryamanitswe, badashobora kugaragaza ibimenyetso basabwa, bikaba byumvikanisha ko ritamanitswe ahategetswe hose nk'uko Ntaganzwa Faustin abivuga, cyane ko Munyantore Bonaventure,

nk'Umuhesha w'inkiko w'umwuga, uri mu rwego rw'abakora imirimo y'inyungu rusange z'Igihugu, mu cyiciro cy'abunganira Ubutabera nk'uko bivugwa mu ngingo ya 60 y'Itegeko N° 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko, kandi ufite inshingano zo gukorana imirimo ye ubwitonzi, ubuhanga n'ubushishozi nk'uko bivugwa mu ngingo ya 69 y'iryo tegeko, atari ayobewe ko ari inshingano ze kugaragaza, igihe bibaye ngombwa, ibimenyetso by'uko yubahirije ibyategetswe n'Urukiko.

[38] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga imenyekanisha rya cyamunara ritarubahirije ibiteganywa mu ngingo ya 295, igika cya gatatu y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu.

C. Kumenya niba Uwitonze Innocent yaregukanye inzu ya Ntaganzwa Faustin mu buryo bunyuranyije n'amategeko

[39] Me Nzeyimana Lusina Innocent uhagarariye Ntaganzwa Faustin avuga ko Munyantore Bonaventure yafashe inzu ye ayiha Uwitonze Innocent atayiguze muri cyamunara kuko nta kigaragaza aho yishyuye ikiguzi cy'inzu, ibyo bikaba binyuranyije n'ibiteganywa n'ingingo ya 306 igika cya 2, 307 na 315 z'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu kuko uwitwa ko yaguzwe yananiwe kugaragariza Urukiko *bordereau* yishyuriyeho kuri konti y'Urukiko.

[40] Avuga kandi ko ikindi kigaragaza ko Uwitonze Innocent yegukanye inzu mu buryo bunyuranyije n'amategeko, ari uko amazina y'abavugwa ko bitabiriye cyamunara yo ku wa 04/08/2016 ari ay'aba *commissionnaires* Uwitonze Innocent yashakishije, akaba ari amazina amenyerewe kwifashishwa muri za cyamunara kugirango bagaragaze ko yitabiriwe.

[41] Akomeza avuga ko ikindi nanone kigaragaza ko cyamunara yabayemo uburiganya, ari inyandikomvugo ya cyamunara yakozwe na Munyantore Bonaventure ku wa 06/07/2016 avuga ko uwitwa Musoni Jean Bosco yegukanye inzu kuko yatanze 16.500.000 Frw, ngo ariko akazishyura ku wa 07/07/2016, 8h00, uwo munsu, mu ma saa 16h00 agakora indi nyandiko ivuga ko cyamunara isubitswe, ibi bikaba binyuranyije n'ibivugwa mu ngingo ya 301 igika cya 3 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu.

[42] Me Twizeyimana Innocent uhagarariye Munyantore Bonaventure na Uwitonze Innocent avuga ko ibivugwa na Ntaganzwa Faustin nta shingiro byahabwa kuko Uwitonze Innocent nawe yari yemerewe gupiganwa muri cyamunara nk'abandi, kuko ingingo ya 315 y'itegeko ryavuzwe ibimwemerera, nawe akaba yari kuri lisiti y'abapiganwa, ndetse akaba ari nawe utanga amafaranga menshi kurusha abandi bari bitabiriye iyo cyamunara.

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[43] Ku birebana n'uko cyamunara yo ku wa 04/08/2016 yaba yaritabiriwe na ba *commissionnaires* Uwitonze Innocent yashakishije, bamenyerewe kwifashishwa muri za cyamunara kugira ngo bigaragaze ko yitabiriwe, Urukiko rurasanga usibye kubivuga uburanira

Ntaganzwa Faustin atagaragaza ibimenyetso ashingiraho abivuga, rukaba rero ntaho rwahera rwemeza ko ibyo avuga ari ukuri.

[44] Ku bijyanye n'uko inzu ya Ntaganzwa Faustin yabanje kwegurirwa uwitwa Musoni Jean Bosco muri cyamunara yabaye ku wa 06/07/2016 kuko ariwe wari watanze amafaranga menshi kurusha abandi, ariko uwo munsu Umuhesha w'inkiko Munyantore Bonaventure agakora indi nyandiko mvugo ya cyamunara ivuga ko isubitswe ku itariki ya 04/08/2016 bitewe n'uko uwari wegukanye inzu yamumenyesheje ko atakiyiguzwe kuko aho yari yizeye amafaranga bitashobotse, Urukiko rurasanga ubwabyo bitagaragaza ko cyamunara yabayemo uburiganya kuko ingingo ya 312 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, ari nayo Munyantore Bonaventure yashingiyeho asubika cyamunara nk'uko bigaragara mu nyandiko mvugo yayo, iteganya ko "iyu uwaguzwe muri cyamunara atishyuye uko yabyemeye, icyo yari yaguzwe cyongera gutezwa cyamunara", yamuhaga uburenganzira bwo gusubika cyamunara igihe uwaguzwe atishyuye nk'uko yabyiyemeje.

[45] Ku birebana n'uburyo bwo kwishyura umutungo wagurishijwe muri cyamunara, Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ryakurikizwaga igihe cyamunara yakorwaga riteganya, mu ngingo yaryo ya 306, igika cya kabiri ko "uwaguzwe muri cyamunara (...) yishyura mu gihe kitarenze umunsi umwe (1) w'akazi ukurikira cyamunara amafaranga ya cyamunara kuri konti y'Urukiko Rwisumbuye rwo mu ifasi iyo cyamunara yabereyemo; rigateganya nanone mu ngingo yaryo ya 307 ko "uberewemo umwenda yishyurwa n'umucungamari w'Urukiko Rwisumbuye rwakiriye amafaranga ya cyamunara amaze kuvanamo amagarama y'urubanza, amafaranga asigaye agashyikirizwa nyir'ibintu byatejwe cyamunara mu gihe nta bandi bagomba kwishyurwa nyuma y'iminsi cumi n'itanu (15); naho mu ngingo ya 315 rigateganya ko "nta na rimwe, uwasabye ko bafatira ibintu by'undi ashobora kubitwara atabiguzwe muri cyamunara nk'abandi".

[46] Urukiko rurasanga izi ngingo z'amategeko zumvikanisha ko uwaguzwe umutungo muri cyamunara awegukana ari uko awishyuye mu gihe no mu buryo bitegetswe, uberewemo umwenda nawe akishyurwa mu gihe no mu buryo bitegetswe.

[47] Urukiko rurasanga rero kuba uwaguzwe umutungo muri cyamunara ari nawe uberewemo umwenda bitamuhesha uburenganzira bwo kutishyura umutungo watejwe cyamunara yitwaje umwenda aberewemo kuko icyo yitabiriye cyamunara igurishwamo umutungo w'umubereyemo umwenda afatwa nk'abandi baguzi bose, ibi bikaba byumvikana kuko ari bumwe mu buryo bwo kwirinda ko umutungo w'umuntu ugurishwa ku giciro kidafite aho gihuriye n'agaciro kawo nyakuri.

[48] Hashingiye ku bimaze kuvugwa, Urukiko rurasanga Uwitonze Innocent yaregukanye inzu ya Ntaganzwa Faustin mu buryo bunyuranyije n'amategeko nk'uko uyu abivuga kuko yayegukanye nta bwishyu atanze yitwaje umwenda aberewemo.

[49] Mu gusoza, Urukiko rurasanga cyamunara yabaye ku wa 04/08/2016 igomba guseswa nk'uko Ntaganzwa Faustin abisaba kuko yakozwe mu buryo bunyuranyije n'amategeko, haba ku birebana n'imenyekanisha rya cyamunara, haba no ku birebana n'ubwishyu bw'inzu yatejwe cyamunara.

D. Ku birebana n'indishyi zisabwa muri uru rubanza

[50] Ntaganzwa Faustin avuga ko asaba 3.000.000 Frw y'indishyi z'akabaro zo kumushora mu manza, 1.500.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza, yose agatangwa n'abaregwa bombi, Munyantore Bonaventure na Uwitonze Innocent.

[51] Uwitonze Innocent avuga ko indishyi zisabwa na Ntaganzwa nta shingiro zifite kuko ariwe wakuruye izi manza zose, aho gushyira mu bikorwa ibyo yatsindiwe mu rukiko.

[52] Avuga kandi ko Ntaganzwa Faustin yamushoye mu manza nyinshi, kugeza ubu akaba amaze kumurega mu manza zirenga esheshatu (6) kandi agatsindwa, ariko ntanyurwe agakomeza kumukurura mu manza, ku buryo bimaze kumutwara amafaranga menshi cyane yishyura abamuburanira muri izo manza zose, akaba asaba ko yamusubiza ayo mafaranga yose yatakaje angana na 6.000.000 Frw akubiyemo 4.000.000 Frw mu nkiko zabanjehiyongereyeho 1.000.000 Frw kuri uru rwego na 1.000.000 Frw y'ikurikiranarubanza.

[53] Munyantore Bonaventure ntacyo yavuze ku ndishyi zasabwe na Ntaganzwa Faustin, ahubwo nawe arasaba ko yamuha 500.000 Frw y'indishyi z'akababaro, 1.500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[54] Urukiko rurasanga indishyi Munyantore Bonaventure na Uwitonze Innocent basaba batazigenywa kuko ntacyo batsindiye mu rubanza.

[55] Urukiko rurasanga indishyi z'akababaro Ntaganzwa Faustin asaba yazihabwa kubera ko yavukijwe umutungo we mu buryo bunyuranyije n'amategeko, ariko akagenerwa 1.000.000 Frw kubera ko ayo asaba ari menshi, kandi adasobanura uko azibara.

[56] Urukiko rurasanga kandi akwiye guhabwa amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza, akanagenerwa 500.000 Frw y'igihembo cya Avoka agenwe mu bushishozi bw'urukiko kuko 1.500.000 Frw asaba atayatangira ibisobanuro, akagenerwa na 100.000 Frw y'ikurikiranarubanza kuko ari mu rugero.

[57] Urukiko rurasanga Munyantore Bonaventure na Uwitonze Innocent bagomba gufatanya kwishyura amafaranga yategetswe kuko bombi bagize uruhare mu igurishwa ry'inzu ya Ntaganzwa Faustin muri cyamunara yakozwe mu buryo bunyuranyije n'amategeko.

III. ICYEMEZO CY'URUKIKO:

[58] Rwemeje ko ikirego cya Ntaganzwa Faustin cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 00052/18/TGI/GSBO rwaciwe n' Urukiko Rwisumbuye rwa Gasabo ku wa 17/10/2018 gifite ishingiro;

[59] Rwemeje ko imikirize y'urwo rubanza ihindutse kuri byose, cyamunara y'umutungo utimukanwa wa Ntaganzwa Faustin yabaye ku wa 04/08/2016 ikaba iteshejwe agaciro;

[60] Rutegetse Munyantore Bonaventure na Uwitonze Innocent guha Ntaganzwa Faustin 1.600.000 Frw akubiyemo 1.000.000 Frw y'indishyi z'akababaro, 100.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka.