IBYISI v KALISA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC00023/2018/SC (Mukakalisa, P.; Nyirinkwaya; Cyanzayire; Rukundakuvuga na Hitiyaremye, J.) 24 Nyakanga 2020]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Gusubirishamo urubanza ku mpamvu z'akarengane – Ubujurire – Iyo urubanza rusubirishwamo ku mpamvu z'akarengane ari urubanza rushingiye ku kuba Urukiko rwaranze kwakira ubujurire hirengagijwe amategeko, Urukiko ruburanisha urubanza rwasabiwe gusubirishwamo rusuzuma iyo mpamvu rwasanga ifite ishingiro rugaca urubanza rubanziriza urundi rukemeza ko hirengagijwe amategeko hangwa kwakira ubujurire maze rukemeza ko iburanisha rikomeza hasuzumwa ingingo z'ubujurire yari yaratanze muri urwo Rukiko.

Amategeko agenga ubutaka – Iyandikishwa ry'ubutaka – Gutesha agaciro icyangombwa cy'ubutaka – Uwakwiyandikishaho ubutaka aterekanye ko yabubonye muri bumwe mu buryo buteganyijwe n'itegeko, aba abikoze mu buryo bunyuranyije n'amategeko, ibyangombwa yahabwa, ubwabyo akaba atari byo bituma abugiraho uburenganzira, kubera ko bishobora guteshwa agaciro hagize ugaragaza ko ubwo butaka ari we nyirabwo.

Incamake y'ikibazo: Ibyisi yategetswe na Komite y'Abunzi kwishyura umwenda yari abereyemo Itsinda Inyamibwa, mu rwego rwo kurangiza umwanzuro wabo hatangizwa imihango ya cyamunara yagombaga gukorerwa ku mutungo we.

Yajyanye ikirego mu Rukiko rw'Ibanze rwa Gisenyi arega Mukantabana wari ukuriye itsinda n'Umuhesha w'Inkiko w'Umwuga wagombaga kurangiza uwo mwanzuro, agamije ko cyamunara yahagarikwa avuga ko umwanzuro w'Abunzi warangizwaga wari urimo amakosa kandi Abunzi barafashe undi mwanzuro uwukosora. Urukiko rwaciye urubanza rwemeza ko ikirego cye ntashingiro gifite ko cyamunara yari iteganyijwe ikomeza.

Ibyisi ntiyishimiye imikirize ajuririra urwo rubanza mu Rukiko Rwisumbuye rwa Rubavu avuga ko Urukiko rw'Ibanze rutahaye ishingiro ukwiregura kwe, maze urwo Rukiko ruca rwemeza ko ikirego cya Ibyisi kitakiriwe kuko yajuriye impitagihe.

Ibyisi na none yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko Rwisumbuye rwa Rubavu rwanze kwakira ubujurire bwe ku mpamvu y'uko yarengeje igihe cyo kujurira kandi atariko bimeze, kuko rwirengagije ingingo y'itegeko yashingiyeho ajurira. Urukiko rwasuzumye ubujurire bwe rusanga ntakosa Urukiko Rwisumbuye rwakoze kwanga kwakira ubujurire bwe maze ruca urubanza rwanga kwakira ikirego rushingiye ku mpamvu y'uko ari ubujurire bwa kabiri.

Ibyisi ntiyisimiye imikirize y'urubanza yandikira Perezida w'Urukiko rw'ubujurire asba ko urubanza rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire nawe yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo. Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rusubirwamo rukaburanishwa n'Urukiko rw'Ikirenga.

Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi, rwemeza ko ikirego cyatanzwe na IBYISI Augustin gisaba gusubirishamo ku mpamvu z'akarengane rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, gifite ishingiro ku birebana no kuba ubujurire yatanze mu Rukiko Rwisumbuye butarakiriwe kandi yarabutanze mu buryo bukurikije amategeko, ruvuga ko iburanisha rizakomeza hasuzumwa ingingo z'ubujurire yari yaratanze muri urwo Rukiko hamwe n'ikibazo cy'indishyi zasabwe mu rubanza.

Incamake y'icyemezo: 1. Iyo urubanza rusubirishwamo ku mpamvu z'akarengane ari urubanza rushingiye ku kuba Urukiko rwaranze kwakira ubujurire hirengagijwe amategeko, Urukiko ruburanisha urubanza rwasabiwe gusubirishwamo rusuzuma iyo mpamvu rwasanga ifite ishingiro rugaca urubanza rubanziriza urundi rukemeza ko hirengagijwe amategeko hangwa kwakira ubujurire maze rukemeza ko iburanisha rikomeza hasuzumwa ingingo z'ubujurire yari yaratanze muri urwo Rukiko, bityo gusubirishamo urubanza ku mpamvu z'akarengane byatanzwe na Ibyisi bifite ishingiro, urubanza rukaba rugomba kuburanishwa ku mpamvu z'ubujurire yari yaratanze

2. Inyandikompuruza ni ikimenyetso kigaragaza ko ibyemejwe mu nyandikompesha bishobora guhita bishyirwa mu bikorwa ku neza cyangwa ku ngufu za Leta. Iyo inzira zo gushyira mu bikorwa izo nyandiko mpesha zikozwe mu buryo bukurikije amategeko nta mpamvu nimwe Urukiko rwashingiraho ruhagarika cyamunara yari iteganyijwe, bityo ibyo Ibyisi yavuze ko Urukiko rw'Ibanze rwirengagije bikaba ntashingiro bifite, ubujurire yatanze bukaba butakiriwe.

Ingingo z'ubujurire zatanzwe nta shingiro zifite;
Ikirego kiregera kwiregura gifite ishingiro.

Amategeko yashyimgiweho:
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 242
Itegeko Ngenga nº 02/2010/OL ryo ku wa 09/06/2010 rigena imiterere, ifasi, ububasha n'imikorere bya komite y'abunzi, ingingo ya 15 igika cya kabiri, ingingo ya 17 igika cya 3 n'ingingo ya 18 igika cya mbere
Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 253

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ibyisi Augustin yafashe umwenda w'ibihumbi magana atanu na mirongo itatu (530.000 Frw) mu Itsinda Inyamibwa rihagarariwe na Mukantabana Clémentine, ariko ntiyabasha kuwishyura nk'uko amasezerano yabiteganyaga bituma aregwa muri Komite y'Abunzi b'Akagari ka Byahi. Ku itariki ya 09/12/2015, Inteko y'Abunzi yasanze uwo mwenda uteganywa n'amasezerano kandi Ibyisi Augustin awemera, yanzura ko atsinzwe, ategekwa kwishyura miliyoni imwe n'ibihumbi ijana na mirongo itandatu na bitandatu (1.166.000 Frw) hiyongereyeho 5% buri munsi y'igihano cy'ubukererwe, umwanzuro uterwaho kashempuruza.

[2] Hatangiye inzira yo kurangiza umwanzuro w'Abunzi, Ibyisi Augustin yatanze ikirego mu Rukiko rw'Ibanze rwa Gisenyi arega Mukantabana Clémentine ukuriye Itsinda ryamuhaye inguzanyo, na Kalisa Ribakare Didier, Umuhesha w'Inkiko w'Umwuga wagombaga kurangiza umwanzuro w'Abunzi. Mu kirego cye yasabaga ko cyamunara yari iteganyijwe ku mutungo we ku itariki ya 10/02/2017 ivanwaho avuga ko yari ishingiye ku byemezo by'Inteko y'Abunzi bivuguruzanya, kubera ko hagati aho, ku itariki ya 23/01/2017, Abunzi bavuze ko bibeshye ku ngano y'ibihano by'ubukererwe, ko bategetse 500 Frw y'igihano cy'ubukererwe buri munsi aho kuba 5%.

[3] Ku itariki ya 24/03/2017, Urukiko rw'Ibanze rwa Gisenyi rwaciye urubanza RC 00016/2017/TB/GIS rwemeza ko ikirego cya Ibiyisi Augustin nta shingiro gifite, ko cyamunara yari iteganyijwe ku itariki ya 10/02/2017 ikomeza.

[4] Mu gufata icyo cyemezo, Urukiko rwashingiye ku mpamvu zikurikira:

- Imihango yose ya cyamunara yarubahirijwe mu buryo buteganywa n'amategeko;
- Inyandiko yakozwe n'abantu babiri (2) ntiyasimbuzwa umwanzuro w'Abunzi wateweho kashempuruza kuko ari inyandiko isanzwe idafite aho ihuriye n'umwanzuro w'Abunzi;
- Iyo Abunzi baba baribeshye, baba barakoze undi mwanzuro ukosora uwa mbere.

[5] Ku itariki ya 24/04/2017, Ibyisi Augustin yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Rubavu avuga ko Urukiko rw'Ibanze rutahaye ishingiro ukwiregura kwe, maze ku itariki ya 04/01/2018, urwo Rukiko ruca urubanza RCA 00024/2017/TGI/RBV, rwemeza ko ikirego cya Ibyisi Augustin kitakiriwe kuko yajuriye impitagihe.

[6] Ibyisi Augustin yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko Rwisumbuye rwa Rubavu rwanze kwakira ubujurire bwe ku mpamvu y'uko yarengeje igihe cyo kujurira kandi atariko bimeze, kuko rwirengagije ingingo y'itegeko yashingiyeho ajurira.

[7] Ku itariki ya 31/05/2018, Urukiko Rukuru, Urugereko rwa Musanze, nyuma yo gusuzuma urubanza rwajuririwe rugasanga nta makosa yakozwe n'Urukiko Rwisumbuye, rwaciye urubanza RCAA 00001/2018/HC/MUS rwanga kwakira ubujurire bwa Ibyisi Augustin ku mpamvu y'uko ari ubujurire bwa kabiri rushingiye ku ngingo ya 106[1] y'Itegeko Ngenga N° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko ryakurikizwaga icyo gihe.

[8] Ibyisi Augustin yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RCAA 00001/2018/HC/MUS rwasubirishwamo ku mpamvu z'akarengane, kubera ko Urukiko rutubahirije amategeko uko ari rukavuga ko yajuriye akerewe kandi yarabikoze mu gihe giteganywa n'amategeko hashingiwe ku ngingo ya 370 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga icyo gihe, ubu ikaba yarahindutse iya 276 mu itegeko rishya.

[9] Nyuma yo gusesengura urwo rubanza, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga amusaba gusuzuma akarengane kabaye mu rubanza RCAA 00001/2018/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubwo busabe, yemeza ko urwo rubanza rusubirwamo, rwandikwa kuri RS/INJUST/RC 00023/2018/SC.

[10] Ku itariki ya 31/01/2020, Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi, rwemeza ko ikirego cyatanzwe na Ibyisi Augustin gisaba gusubirishamo ku mpamvu z'akarengane urubanza

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[1] Urukiko Rukuru ruburanisha imanza z'imbonezamubano zajuririwe, zaciwe mu rwego rwa kabiri n'Urukiko Rwisumbuye, mu gihe izo manza:

1.Zitagaragaza na busa impamvu zishingiyeho mu icibwa ryazo, zishingiye ku itegeko ritariho cyangwa zaciwe n'Urukiko rutabifitiye ububasha

2. Zaciwe hashingiwe ku kimenyetso, inyandiko cyangwa imanzuro byatanzwe nyuma yo gupfundikira iburanisha kandi hatarabayeho gusubukura iburanisha

3.Zaciwe n'inteko itujuje umubare ugenwe

4. Zaciwe n'umucamanza utaraziburanishije

Zitaburanishijwe mu ruhame kandi nta muhezo wategetswe

RCAA 00001/2018/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku itariki ya 31/05/2018 gifite ishingiro ku birebana no kuba ubujurire yatanze mu Rukiko Rwisumbuye butarakiriwe kandi yarabutanze mu buryo bukurikije amategeko, ruvuga ko iburanisha rizakomeza hasuzumwa ingingo z'ubujurire yari yaratanze muri urwo Rukiko hamwe n'ikibazo cy'indishyi zasabwe mu rubanza.

[11] Ibyisi Augustin yari yarajuriye avuga ko Urukiko rw'Ibanze rwa Gisenyi rwanze guhagarika cyamunara yari gukorerwa ku mutungo we rwirengagije ibimenyetso byari mu mwanzuro wo gutanga ikirego. Ku ruhande rwa Mukantabana Clémentine na Kalisa Ribakare Didier bo basaba ko cyamunara yakomeza kubera ko ishingiye ku myanzuro y'Abunzi yabaye itegeko kandi imihango yose ya cyamunara ikaba yarubahirijwe.

[12] Urubanza rwaburanishirijwe mu ruhame ku itariki ya 30/06/2020 hifashishijwe ikoranabuhanga (*vidéo conférence*), abacamanza bagize inteko bari mu cyumba cy'iburanisha mu Rukiko rw'Ikirenga, Ibyisi Augustin ahagarariwe na Me Murera Valérie, Kalisa Ribakare Didier na Mukantabana Clémentine bahagarariwe na Me Ngiruwonsanga Audace, bari mu cyumba cy'iburanisha mu Rukiko Rwisumbuye rwa Rubavu.

[13] Ikibazo cyasuzumwe muri uru rubanza, ni ukumenya niba hari amakosa Urukiko rw'Ibanze rwa Gisenyi rwakoze rwanga ko cyamunara yari iteganyijwe ku mutungo wa Ibyisi Augustin ku itariki ya 10/02/2017 ihagarikwa, no kumenya niba indishyi zisabwa muri uru rubanza zatangwa.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Kumenya niba hari amakosa Urukiko rw'Ibanze rwa Gisenyi rwakoze rwanga ko cyamunara yari iteganyijwe ku mutungo wa Ibyisi Augustin ku itariki ya 10/02/2017 ihagarikwa.

[14] Me Murera Valérie asobanura ko Ibyisi Augustin yafashe amafaranga mu kimina afatanyije na bagenzi be angana n'ibihumbi magana atanu (500.000 Frw), nyuma aza kunanirwa kuyagarura mu gihe cyari giteganyijwe, uwitwa Mukantabana Clémentine amurega mu Bunzi b'Akagari ka Byahi. Avuga ko ku itariki ya 09/12/2015, Abunzi bafashe umwanzuro bemeza ko amafaranga agomba kwishyura ari 1.166.000, ariko mu gufata icyemezo baribeshya bavuga ko buri munsi w'ubukererwe azajya yishyura 5% y'umwenda wose, bihwanye n'ibihumbi mirongo itanu n'umunani n'amafaranga magana atatu (58.300 Frw).

[15] Avuga ko umwanzuro w'Abunzi wabaye itegeko, umuhesha w'inkiko ashyikirije Ibyisi Augustin itegeko rihatira kwishyura, yatunguwe n'icyo cyemezo cyo gucibwa 5% (58.300 Frw) ya buri munsi kuko atari yarigeze amenyeshwa imyanzuro y'Abunzi. Akomeza avuga ko yasabye iyo myanzuro bakayimuha ku itariki ya 04/01/2017, agahita asaba Abunzi gukosora kuko bari bishe amategeko aho bategetse ko azishyura amafaranga y'ubukererwe y'umurengera, barabikosora bandika ibaruwa igaragaza ko igihano cy'ubukererwe ari amafaranga magana atanu (500 Frw) ku munsi aho kuba 5%, nyamara ariko imihango yo kurangiza umwanzuro w'Abunzi urimo amakosa irakomeza.

[16] Me Murera Valérie avuga ko Ibyisi Augustin yaregeye Urukiko rw'Ibanze rwa Gisenyi arusaba kuvanaho cyamunara yari gukorerwa ku mutungo we hagamijwe kurangiza umwanzuro w'Abunzi wavuzwe haruguru, ariko urwo Rukiko ntirwabiha ishingiro rutegeka ko uwo mwanzuro w'Abunzi wo ku itariki ya 09/12/2015 urangizwa uko wakabaye rwirengagije ibimenyetso bari barugaragarije byerekana ko urimo amakosa, rwirengagiza n'ibaruwa yanditswe n'Abunzi bawukosora. Avuga ko ikindi Urukiko rwirengagije ari uko barweretse ko uwo mwanzuro wari warajuririwe n'ubwo byakozwe bitinze kubera ko atari yarawumenyeshejwe, ariko nyamara rurarenga rutegeka ko cyamunara yari iteganyijwe mu rwego rwo kuwurangiza ikomeza.

[17] Me Ngiruwonsanga Audace uburanira Kalisa Ribakare Didier na Mukantabana Clémentine, avuga ko ku itariki ya 23/09/2016 itsinda Inyamibwa rihagarariwe na Mukantabana Clémentine ryasabye Kalisa Ribakare Didier nk'Umuhesha w'Inkiko w'Umwuga kubarangiriza umwanzuro w'Abunzi b'Akagari ka Byahi, awusuzumye asanga uteyeho kashempuruza, bivuze ko uwo mwanzuro wari wabaye itegeko. Avuga ko Kalisa Ribakare Didier yagejeje kuri Ibyisi Augustin itegeko rimuhatira kwishyura nk'uko nawe abyemera, amuha igihe giteganywa n'itegeko ariko ntiyabyubahiriza, hakurikiraho ifatirabwishyu ry'umutungo we nk'uko amategeko abiteganya.

[18] Akomeza avuga ko ku itariki ya 02/12/2016, basabye Urukiko rw'Ibanze rwa Gisenyi icyemezo gishyiraho umunsi w'icyamunara kugira ngo umutungo wa Ibyisi Augustin ugurishwe haboneke ubwishyu bw'itsinda Inyamibwa bakagihabwa, hakemezwa ko cyamunara izakorwa ku itariki ya 27/01/2017. Avuga ko kuri uwo munsi abaguzi batashoboye kuboneka cyamunara ikimurirwa ku itariki ya 16/02/2017, muri icyo gihe cyose Ibyisi Augustin akaba atarigeze agaragaza icyemezo gihagarika cyamunara cyangwa ngo yerekane umwanzuro w'Abunzi ukosora uwa mbere.

[19] Ku bivugwa na Me Murera Valérie ubaranira Ibyisi Augustin ko atamenyeshejwe umwanzuro w'Abunzi ko kandi yari yarawujuririye ubwo hafatwaga icyemezo ko cyamunara ikomeza, Me Ngiruwonsanga Audace avuga ko ibyo nta shingiro bifite kubera ko Ibyisi Augustin ubwe yasinye kuri uwo mwanzuro, ukaba utarigeze ujuririrwa nk'uko bigaragazwa n'icyemezo cya Komite y'Abunzi b'Umurenge wa Rubavu kiri muri dosiye.

[20] Ku birebana n'inenge Ibyisi Augustin avuga ziri mu mwanzuro w'Abunzi warangizwaga, Me Ngiruwonsanga Audace avuga ko icyo ataricyo cyasuzumwe mu Rukiko rw'Ibanze rwa Gisenyi, ko ahubwo icyasuzumwe ari ibirebana na cyamunara yasabaga ko ihagarikwa.

[21] Mu myanzuro ye, Mukantabana Clémentine ahagarariwe na Me Ngiruwonsanga Audace, avuga ko Ibyisi Augustin yafashe umwenda mu itsinda yayoboraga ryitwa Inyamibwa ntiyawishyura, bamurega mu Bunzi b'Akagari ka Byahi, baca urubanza bamutegeka kuwishyura urwo rubanza ruba itegeko, bashaka Umuhesha w'Inkiko w'Umwuga, amusaba kwishyura ntiyabikora, ahitamo kurega mu Rukiko rw'Ibanze rwa Gisenyi, asaba guhagarika cyamunara, Urukiko rwemeza ko cyamunara igomba gukomeza.

[22] Arangiza asaba Urukiko kutakira ikirego cya Ibyisi Augustin rukareka cyamunara igakomeza kubera ko Urubanza rwe rwahereye mu Bunzi b'Akagari ka Byahi, ruba itegeko ntiyarujurira ku rwego rw'Umurenge, arangije yanga no kwishyura amafaranga yemera, ngo wenda hasigare ayo atemera. Indi mpamvu ituma basaba ko cyamunara ikomeza akaba ari uko mu mihango yose iteganywa n'itegeko kugira ngo cyamunara ibeho nta n'umwe wirengagijwe.

UKO URUKIKO RUBIBONA

[23] Impande zombi zemeranya ko habayeho urubanza mu Bunzi hagati ya Ibyisi Augustin n'Itsinda Inyamibwa rihagarariwe na Mukantabana Clémentine, icyaregerwaga akaba ari umwenda w'ibihumbi magana atanu na mirongo itatu (530.000 Frw) IbAyisi Augustin yari abereyemo iryo tsinda. Icyo batumvikanaho, ni icyemezo cyafashwe n'Urukiko rw'Ibanze rwa Gisenyi rwanze guhagarika cyamunara yari iteganyijwe mu rwego rwo gushyira mu bikorwa umwanzuro w'Abunzi. Ibyisi Augustin avuga ko iyo cyamunara yagombaga guhagarara kubera ko itari ikurikije amategeko, mu gihe ku rundi ruhande bo basanga igomba gukomeza kubera ko imihango yose ijyanye n'amategeko yubahirijwe.

[24] Ingingo ya 15, igika cya kabiri, y'Itegeko Ngenga Nº 02/2015/OL ryo ku wa 16/07/2015, rihindura kandi ryuzuza Itegeko Ngenga Nº 02/2010/OL ryo ku wa 09/06/2010 rigena imiterere, ifasi, ububasha n'imikorere bya Komite y'Abunzi, ryakurikizwaga igihe umwanzuro w'Abunzi uvugwa muri

uru rubanza wafatwaga, iteganya ko iyo umwe mu bafitanye ikibazo yanze kubahiriza icyemezo cyafashwe na Komite y'Abunzi, urebwa n'icyo kibazo bibangamiye ashobora gusaba ko gishyirwa mu bikorwa ku gahato hakurikijwe amategeko asanzwe yerekeranye no kurangiza imanza hakoreshejwe ingufu. Icyo gihe, asaba mu magambo cyangwa mu nyandiko Perezida w'Urukikorw'Ibanze rwo mu ifasi y'aho icyemezo cyafatiwe kugishyiraho kashempuruza nta garama ritanzwe.

[25] Ingingo ya 242 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 inyandikompuruza ari ikimenyetso kigaragaza ko ibyemejwe mu nyandikompesha zivugwa mu ngingo ya 241[2] y'iri tegeko bishobora guhita bishyirwa mu bikorwa ku neza cyangwa ku ngufu za Leta.

[26] Ingingo z'amategeko zimaze kuvugwa, zumvikanisha ko umwanzuro w'Abunzi wabaye itegeko ugomba kurangizwa ku neza, bitaba ibyo uwatsinze akaba yasaba ko hiyambazwa inzira zateganyijwe n'amategeko agaheshwa ibyo yatsindiye ku ngufu za Leta. Muri izo nzira hakaba harimo no guteza cyamunara umutungo w'uwatsinzwe kugira ngo havemo ubwishyu[3].

[27] Ku birebana n'uru rubanza, inyandiko zigize dosiye zigaragaza ko ku itariki ya 09/12/2015, Abunzi bo mu Kagari ka Byahi bafashe umwanzuro nomero 66 bategeka Ibyisi Augustin kwishyura Itsinda Inyamibwa miliyoni imwe n'ibihumbi ijana na mirongo itandatu na bitandatu (1.166.000 Frw), atakwishyura akazajya atanga 5% buri munsi. Uwo mwanzuro akaba yarahise awumenyeshwa nk'uko bigaragazwa n'umukono yawushyizeho, ukaba kandi warabaye itegeko kubera ko washyizweho kashempuruza. Izo nyandiko zigaragaza kandi ko ku itariki ya 13/12/2016, Perezida w'Urukiko rw'Ibanze rwa Gisenyi yafashe icyemezo N° 0029/16/TB/GIS gishyiraho umunsi w'icyamunara, muri icyo cyemezo akaba yarategetse ko umutungo wa Ibyisi Augustin uzatezwa cyamunara ku itariki ya 27/01/2017 kugira ngo harangizwe umwanzuro nomero 66 wafashwe n'Abunzi b'Akagari ka Byahi ku itariki ya 09/12/2015, cyamunara ikaba yaraje kwimurirwa ku itariki ya 10/02/2017 kubera ko umunsi yari iteganyijweho habuze abaguzi nk'uko bigaragazwa n'inyandiko-mvugo yakozwe kuri uwo munsi iri muri dosiye.

[28] Nk'uko byagaragajwe haruguru, Urukiko rw'Ibanze rwa Gisenyi rwanze guhagarika cyamunara yari iteganyijwe ku mutungo wa Ibyisi Augustin ruvuga ko imihango yose ijyanye n'amategeko ku birebana na cyamunara yari yarubahirijwe. Harebwe inyandiko ziri muri dosiye nk'uko zimaze gusobanurwa haruguru, uru Rukiko rurasanga Ibyisi Augustin atagaragaza amategeko yishwe ashingiraho avuga ko cyamunara yari iteganyijwe ku mutungo we yagombaga guhagarara.

[29] Ku bivugwa na Me Murera Valérie uburanira Ibyisi Augustin ko umwanzuro w'Abunzi yari yarawujuririye, Urukiko rurasanga nta shingiro bifite kubera ko muri dosiye hagaragaramo icyemezo cyatanzwe na Komite y'Abunzi bo ku rwego rw'Umurenge wa Rubavu cyerekana ko kugeza ku itariki ya 28/07/2016 nta bujurire ku mwanzuro w'Abunzi N° 66 bari bafite. Icyo gihe hakaba hari hashize amezi arindwi n'iminsi 19 umwanzuro ufashwe. Uretse n'ibyo kandi, nawe ubwe mu gihe cy'iburanisha

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[2] Inyandikompesha ni inyandiko zishingiye ku byemezo by'inzego zibifitiye ububasha cyangwa byemeranyijweho n'abo bireba, zishobora kurangizwa ku gahato zimaze kugenzurwa no kwemezwa n'umwanditsi w'urukiko, cyangwa undi mukozi ubifitiye ububasha.
Inyandikompesha ni izi zikurikira:

1° imanza zaciwe n'inkiko;

2° ibyemezo by'abacamanza;

3° imanza z'inkiko nkemurampaka; 4° imyanzuro ya komite y'abunzi; […]

[3] Ingingo ya 253 y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga hashyirwaho cyamunara ivugwa muri uru rubanza, iteganya ko iyo umuburanyi watsinzwe atarangije urubanza rwe ku neza mu gihe cyategetswe rurangizwa ku gahato hafatirwa ibintu bye bigatezwa cyamunara

yivugiye ko yawujuririye atinze, impamvu atanga ko Ibyisi Augustin yawumenyeshejwe atinze nayo ikaba nta shingiro ifite kubera ko bigaragara ko yawumenyeshejwe icyemezo kikimara gufatwa ku itariki ya 09/12[4]/2010 nk'uko bigaragazwa n'umukono yawushyizeho. Akaba rero yaragombaga kujya kuwufata mu gihe kitarenze iminsi cumi n'itanu (15) hashingiwe ku biteganwa n'ingingo ya 17, igika cya gatatu, y'Itegeko Ngenga Nº 02/2015/OL ryo ku wa 16/07/2015, rihindura kandi ryuzuza Itegeko Ngenga Nº 02/2010/OL ryo ku wa 09/06/2010 rigena imiterere, ifasi, ububasha n'imikorere bya Komite y'Abunzi, ryakurikizwaga icyo gihe, yaba afite icyo awunenga akawujuririra mu gihe gitenywa n'amategeko.

[30] Kuba uwo mwanzuro Ibyisi Augustin atarawujuririye nk'uko byerekanwe haruguru, ukarinda uterwaho kashempuruza ku itariki ya 22/08/2016, hamaze gusuzumwa ko utajuririwe nk'uko nabyo byagarutsweho haruguru, uru Rukiko rurasanga wari wamaze kuba itegeko ku buryo ntacyari kubuza gushyira mu bikorwa ibiwukubiyemo.

[31] Ku bivugwa n'uburanira Ibyisi Augustin ko uwo mwanzuro warimo amakosa ngo kubera ko Abunzi bivuguruje mu cyemezo cyabo bakavuga ko natishyura ku gihe azacibwa 5% y'inyungu ku munsi, nyuma bakavuga ko ari 500 Frw y'ubukererwe ku munsi, Urukiko rurasanga nta shingiro bifite kubera ko, nk'uko n'Urukiko rw'Ibanze rwa Gisenyi rwabibonye, inyandiko yo ku itariki ya 23/01/2017 yakozwe n'abantu babiri (2) batagize inteko[5] bavuga ko igihano cy'ubukererwe ari 500 Frw ku munsi aho kuba 5%, ntiyafatwa nk'umwanzuro ukosora ngo isimbure umwanzuro w'Abunzi warangije kuba itegeko. Iyo aza kubona ko mu mwanzuro wamufatiwe harimo amakosa, yari gusaba inteko y'Abunzi bawufashe bakawukosora, bitashoboka hagashyirwaho indi nteko nk'uko biteganywa n'ingingo ya 23, igika cya mbere n'icya kabiri, y'Itegeko N° 37/2016 ryo ku wa 08/09/2016 rigena imitunganyirize, ifasi, ububasha n'imikorere bya Komite y'Abunzi[6]. Hashingiwe ku biteganywa n'iyo ngingo, ntabwo abunzi babiri (2) bari kwiherera ngo bahindure icyemezo cyafashwe n'inteko y'abunzi batatu (3).

[32] Hashingiwe ku ngingo z'amategeko no ku bisobanuro byatanzwe haruguru, Urukiko rurasanga nta makosa yakozwe n'Urukiko rw'Ibanze rwa Gisenyi rwanga guhagarika cyamunara yari iteganyijwe gukorwa ku mutungo wa Ibyisi Augustin, bityo ingingo z'ubujurire yari yaratanze mu Rukiko Rwisumbuye rwa Rubavu zikaba nta shingiro zifite.

Ku bijyanye n'indishyi zasabwe muri uru rubanza

[33] Ibyisi Augustin avuga ko asaba Urukiko gutegeka abaregwa kumuha indishyi zikurikira:

- 1.500.000 Frw y'indishyi z'akababaro bamuteje kubera kumubabaza no kumusiragiza mu manza,
- 2.000.000 Frw y'igihembo cya Avoka mu nkiko eshatu yaburaniyemo (500.000 x 2) + 1.000.000 Frw yo kuri uru rwego.

[34] Mukantabana Clémentine na Kalisa Ribakare Didier bavuga ko Ibyisi nta ndishyi yahabwa kuko nawe yemera ko hari umwenda atishyuye akaba ariwe witeza igihombo, kuko amafaranga yishyuye abunganizi kugeza no kuri uru rwego akibakoresha, yagombye kuba yarayishyuye Itsinda Inyamibwa bikarangira.

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[4] Iyo ngingo iteganyaga ko abafitanye ikibazo batemerewe kurenza iminsi cumi n'itanu (15) y'akazi uhereye ku munsimbaboneyeho icyemezo cyanditse bataraza kugifata. Muri icyo gihe, igihe cyo kujurira gitangira kubarwa

[5] Ingingo ya 18, igika cya mbere, y'Itegeko Ngenga nº 02/2010/OL ryo ku wa 09/06/2010 rigena imiterere, ifasi, ububasha n'imikorere bya komite y'abunzi nk'uko ryahinduwe kandi ryujujwe, iteganya ko ku munsi wo kwitaba, abafitanye ikibazo bahitamo, muri Komite y'Abunzi, Abunzi batatu bumvikanyeho, bakabashyikiriza ikibazo cyabo.

[6] Iyo ngingo iteganya ko "Ikibazo gisaba gusobanura cyangwa gukosora umwanzuro wa Komite y'Abunzi gishyikirizwa Umunyamabanga Nshingwabikorwa w'urwego bireba na we akagishyikiriza Komite y'Abunzi. Ikibazo gisuzumwa n'Inteko y'Abunzi yafashe uwo mwanzuro. Iyo idashoboye kuboneka Komite y'Abunzi yitoramo Inteko isuzuma icyo kibazo

[35] Mukantabana Clémentine na Kalisa Ribakare Didier batanze ikirego kiregera kwiregura basaba Urukiko gutegeka IBYISI Augustin kubishyura 1.000.000 Frw kuri buri rukiko baburaniyeho, kuko itsinda ryishyuye amafaranga ibihumbi 500.000 Frw kuri buri rwego, ndetse n'umuhesha w'inkiko w'umwuga Karisa Ribakare Didier nawe akaba yaratanze ibihumbi 500 000 Frw kuri buri rwego y'igihembo cya Avoka abitewe no gushorwa mu manza ku maherere, yose hamwe akaba miliyoni eshatu (3.000.000 Frw). Basaba kandi kumutegeka kubaha indishyi zo gushorwa mu manza zingana n'amafaranga 500.000 kuri buri wese, indishyi zose basaba zikaba zingana na 4.000.000 Frw ziyongera ku zo bagenewe mu manza zabanjirije uru.

UKO URUKIKO RUBIBONA

[36] Ku birebana n'indishyi zisabwa na Ibyisi Augustin, Urukiko rurasanga ntazo agomba guhabwa kubera ko ntacyo atsindiye muri uru rubanza.

[37] urukiko rurasanga ku ndishyi zisabwa na mukantabana clémentine hamwe na kalisa ribakare didier, bakwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cya avoka, kubera ko bigaragara ko bashatse avoka ubaburanira, ariko kubera ko ayo basaba ari menshi kandi bakaba batabasha kuyatangira ibisobanuro, mu bushishozi bwarwo, rukaba rubageneye bombi ibihumbi magana atanu (500.000 frw) y'igihembo cya avoka, kuko ubaburanira ari umwe, n'ibihumbi magana atatu (300.000 frw) y'ikurikiranarubanza.

[38] Urukiko rurasanga nta ndishyi zo gushorwa mu manza ku maherere Mukantabana Clémentine na Kalisa Ribakare Didier bagomba kugenerwa, kubera ko Ibyisi Augustin yari afite uburenganzira bwo kwiyambaza inkiko mu gihe muri we yumvaga hari inyungu agomba kurengera, bityo n'ubwo atsinzwe, hakaba nta kigaragaza ko icyo yari agamije kwari ugushora abo baburana mu nkiko ku maherere.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ingingo z'ubujurire zari zaratanzwe na Ibyisi Augustin mu Rukiko Rwisumbuye rwa Rubavu nta shingiro zifite;

[40] Rwemeje ko ikirego kiregera kwiregura cyatanzwe na Mukantabana Clémentine hamwe na KALISA RIBAKARE Didier gifite ishingiro kuri bimwe;

[41] Rwemeje ko nta gihindutse ku mikirize y'urubanza RC 00016/2017/TB/GIS rwaciwe n'Urukiko rw'Ibanze rwa Gisenyi ku itariki ya 24/03/2017;

[42] Rwemeje ko cyamunara yagombaga gukorerwa ku mutungo wa Ibyisi Augustin igumyeho;

[43] Rutegetse Ibyisi Augustin kwishyura Mukantabana Clémentine na Kalisa Ribakare Didier bombi ibihumbi magana inani (800.000 Frw) akubiyemo igihembo cya Avoka, n'ikurikiranarubanza.