TWAHIRWA v KALIGIRWA

[Rwanda – URUKIKO RW'IKIRENGA – RCAA 0036/15/CS (Kayitesi R., P.J., Hitiyaremye na Gakwaya, J.) 17 Ugushyingo 2017]

Amategeko agenga umuryango – Ababanaga batarashakanye mu buryo bukurikije amategeko – Umutungo – Kugabana umutungo wababanaga nk'umugabo n'umugore batarashyingiranywe mu buryo byemewe n'amategeko – Iyo ababanaga nk'umugore n'umugabo batagishoboye kubana, hari imitungo bungutse mu gihe babanaga ariko batarashyingiranywe, bagomba kuyigabana mu gihe batagishoboye gukomeza kubana, kuko iba yarabonetse bombi babigizemo uruhare.

Incamake y'ikibazo: Kaligirwa Rehema yabanye na Twahirwa Ahmed batarashyingiranywe mu buryo bwemewe n'amategeko, Kaligirwa aza gusaba Urukiko Rwisumbuye rwa Nyarugenge kubagabanya imitungo bashakanye igihe babanaga, kuko bari batakibana nk'umugore n'umugabo.

Bisabwe na Twahirwa, Urukiko rwemeje kutakira ikirego cya Kaligirwa, rusobanura ko nta burenganzira ababyeyi bari bagifite kuri uwo mutungo kuko bawanditse ku mwana wabo ku bwumvikane bwabo bombi, Kaligirwa ahita arujurira mu Rukiko Rukuru, ruza kwemeza ko Urukiko rwa mbere rwagombaga kwakira ikirego kuko hari icyemezo cy'umutungo cyatanzwe mu rubanza kigaragaza ko umutungo wari ucyanditse kuri Twahirwa, maze ruburanisha urwo rubanza mu mizi, rwemeza ko Kaligirwa na Twahirwa bagabana inzu iburanwa.

Twahirwa yajuririye urwo rubanza mu Urukiko rw'Ikirenga anenga Urukiko Rukuru kubagabanya iyo nzu kandi yararangije kuyubaka Kaligirwa yaravuye mu rugo, asaba indishyi Urukiko Rukuru rwanze kumuha yarazisabye, naho Kaligirwa atanga ubujurire bwuririye ku bundi asaba indishyi z'igihombo yatejwe n'umusaruro Twahirwa avana wenyine kuri uwo mutungo, maze mu guca urubanza Urwo Rukiko rwitabaza umugenagaciro wo kugena agaciro inzu iburanwa ifite n'aho inyubako yari igeze Kaligirwa ava mu rugo.

Incamake y'icyemezo: Iyo ababanaga nk'umugore n'umugabo batagishoboye kubana, hari imitungo bungutse mu gihe babanaga ariko batarashyingiranywe, bagomba kuyigabana mu gihe batagishoboye gukomeza kubana kuko iba yarabonetse bombi babigizemo uruhare.

Ubujurire;
Ubujurire bwuririye ku bundi nta shingiro bufite.
Urubanza rwajuririye ntiruhindutse.
Amagarama y'urubanza ahereye kuri Twahirwa.

Amategeko yashingiweho:

Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39.

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 108.

Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 108.

Imanza zifashishijwe:
Urubanza RS/INCONST/ Pén. 0003/10; Gatera na Kabalisa; rwaciwe n'Urukiko rw'Ikirenga kuwa 07 Mutarama 2011.
Urubanza RS/REV/INJUST/CIV 0007/15/CS; Nyirakamana n'abandi na Mukasharangabo n'abandi rwaciwe n'Urukiko rw'Ikirenga kuwa 04 Ukuboza 2015.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Kaligirwa Rehema arega Twahirwa Ahmed asaba ko bagabana inzu iri muri kibanza n° 10969/Masaka bashakanye mu gihe babanaga nk'umugabo n'umugore ariko batarashyingiranywe mu buryo bwemewe n'amategeko nyuma bagatandukana. Twahirwa Ahmed yatanze inzitizi yo kutakira ikirego cya Kaligirwa Rehema kubera ko umutungo yasabaga ko bagabana wari wanditse ku mwana wabo Twamugema Issa, hakaba nta n'umwe muri bo wari uwufiteho uburenganzira.

[2] Ku itariki ya 20/06/2014, Urukiko rwaciye urubanza, rwemeza ko inzitizi yatanzwe na Twahirwa Ahmed ifite ishingiro kuko yemeranywa na Kaligirwa Rehema ko inzu iburanwa yanditse ku mwana wabo kandi bakaba barabikoze babyumvikanyeho, bityo bakaba bariyambuye inyungu kuri uwo mutungo utimukanwa, rutegeka ko ikirego cya Kaligirwa Rehema kitakirwa.

[3] Kaligirwa Rehema yajuririye urwo rubanza mu Rukiko Rukuru, rwemeza ko ikirego cye cyagombaga kwakirwa mu Rukiko Rwisumbuye rwa Nyarugenge kubera ko hari icyangombwa cy'ubutaka kigaragaza ko umutungo uburanwa wanditse kuri Twahirwa Ahmed, rwemeza ko urubanza mu mizi rugomba gukomereza muri urwo Rukiko.

[4] Urubanza mu mizi rwaciwe ku itariki ya 06/07/2015, Urukiko Rukuru rwemeza ko Kaligirwa Rehema na Twahirwa Ahmed bagabana inzu iburanwa kubera ko bayishakanye, ruvuga ko amafaranga y'igihombo Kaligirwa Rehema yasabaga ko ahabwa na Twahirwa Ahmed ashingiye ku mpamvu y'uko ari we uyibyaza umusaruro wenyine adakwiye kuyahabwa, kuko nta bimenyetso yatanze by'uko inzu yuzuye.

[5] Twahirwa Ahmed yajuririye urwo rubanza mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwemeje ko inzu iburanwa yafatanyije na Kaligirwa Rehema kuyubaka rwirengagije ko yavuye mu rugo itararangira, kandi n'imvugo y'uko yatse inguzanyo muri Banki ngo bafatanye kubaka inzu baburana atari ukuri, kuko amafaranga ye yayajyanye mu bikorwa bye, ndetse Urukiko Rukuru rukaba rwaranze kumuha indishyi nyamara byari bikwiye kuko yashowe mu manza nta mpamvu.

[6] Kaligirwa Rehema nawe yatanze ubujurire bwuririye ku bundi, asaba ko ahabwa amafaranga y'indishyi z'igihombo cya miliyoni cumi n'umunani (18.000.000 Frw) Twahirwa

Ahmed yateje kuko ari we ubyaza inzu umusaruro wenyine, n'igihembo cya Avoka kingana na miliyoni enye n'ibihumbi magana atanu (4.500.000 Frw).

[7] Iburanisha ry'urubanza ryabaye mu ruhame ku itariki ya 13/06/2017, Twahirwa Ahmed ahagarariwe na Me Umurungi Mireille, Kaligirwa Rehema ahagarariwe na Me Idahemuka Tharcisse.

[8] Ku itariki ya 14/07/2017 umunsi urubanza rwagombaga gusomerwaho, Urukiko rwafashe icyemezo mu rubanza rubanziriza urundi cyo gushyiraho umuhanga mu by'igenagaciro ry'umutungo utimukanwa kugira ngo arufashe kumenya agaciro k'inzu iburanwa iri mu kibanza n° UPI: 1/03/08/02/1627 iri mu Mujyi wa Kigali, Akarere ka Kicukiro, Umurenge wa Masaka, Akagari ka Cyimo, Umudugudu wa Nyakagunga, by'umwihariko akazagaragariza Urukiko aho inyubako iri muri icyo kibanza yari igeze yubakwa ku itariki ya 12/04/2010 ubwo Kaligirwa Rehema yavaga mu rugo, n'agaciro yari ifite icyo gihe, aho yari igeze Kaligirwa Rehema atanga ikirego n'agaciro kayo, ndetse n'uko ihagaze ubu n'agaciro kayo.

[9] Ababuranyi bongeye kwitaba Urukiko ku itariki ya 17/10/2017 bahagarariwe n'Abavoka babo, uwo munsi umugenagaciro Gatsirombo Egide nawe wari witabye Urukiko, asobanura raporo ku igenagaciro ry'inzu iburanwa yakoze, ababuranyi bagira icyo bayivugaho.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

Kumenya niba Twahirwa Ahmed na Kaligirwa Rehema badakwiye kugabana umutungo uri mu kibanza PC 10969 (UPI: 1/03/08/02/1627) mu buryo bungana

[10] Me Umurungi Mireille uburanira Twahirwa Ahmed avuga ko impamvu yabo y'ubujurire ari uko Urukiko Rukuru rwemeje ko agomba kugabana na Kaligirwa Rehema mu buryo bungana umutungo uri mu kibanza PC 10969 (UPI: 1/03/08/02/1627), nyamara ibi akaba atari ko byari bikwiye kugenda. Asobanura ko inzu iri muri icyo kibanza Twahirwa Ahmed yayubatse mu mwaka wa 2007 ubwo yakoreraga hanze y'igihugu akajya yohereza amafaranga yo kuyubaka. Avuga ko ubwo iyo nzu yari igeze muri "linteau" yubakwa ubuyobozi bwababahagaritse gukomeza imirimo y'ubwubatsi, hagati aho Kaligirwa Rehema ata urugo mu kwezi kwa kane 2010, Twahirwa Ahmed akaba yarongeye kubona uburenganzira bwo gukomeza imirimo yo kubaka akabikora wenyine kuko Kaligirwa Rehema yari yaravuye mu rugo ku itariki ya 26/10/2010.

[11] Avuga ko kuba kuri iyo tariki Ubuyobozi bwaremereye Twahirwa Ahmed gukomeza kubaka kuva ku madirishya akanashyiraho igisenge, ari ikigaragaza ko Kaligirwa Rehema yavuye mu rugo inzu itaruzura bitandukanye n'uko we abivuga, ko iyo bitaba ibyo, hatari gutangwa icyangombwa cyo kongera kubaka; kubera izo mpamvu, agasanga Twahirwa Ahmed na Kaligirwa Rehema bakwiye kugabana agaciro k'inzu kugeza aho yari igeze ubwo Kaligirwa Rehema yataga urugo, agasaba ko Urukiko rubyemeye bakoresha expertise igaragaraza agaciro inzu yari ifite icyo gihe.

[12] Me Idahemuka Tharcisse uburanira Kaligirwa Rehema, avuga ko umukiliya we (cliente) yavuye mu rugo inzu baburana yaruzuye uretse ko itari ikoreye amasuku (finissage) nk'uko na Twahirwa Ahmed yabyemeraga mu iburanisha ryo mu Rukiko Rwisumbuye, kuva ubwo hakaba nta kindi gikorwa cyongeye kuyikorwaho, bityo bakaba bakwiye kuyigabana ku gaciro ifite ubu

kuko bafatanyije kuyubaka. Avuga ko mu gufatanya kuyubaka, Twahirwa Ahmed yakoraga muri Nations Unies, Kaligirwa Rehema acuruza, akaba yaratse n'inguzanyo yayikoreshejeho.

[13] Ku bivugwa na Me Umurungi Mireille ko ikimenyetso kigaragaza ko Kaligirwa Rehema yavuye mu rugo inzu iburanwa itaruzura ari ibaruwa yanditswe n'Umunyamabanga Nshingwabikorwa w'Umurenge yemereraga Twahirwa Ahmed gukomeza imirimo y'ubwubatsi, Me Idahemuka Tharcisse avuga ko iyo baruwa nta gaciro yahabwa kubera ko Umunyamabanga Nshingwabikorwa w'Umurenge atari we utanga uburenganzira bwo kubaka.

[14] Ku byerekeye agaciro k'ikiburanwa, Umugenagaciro Gatsirombo Egide mu gusobanurira Urukiko raporo yakoze, yavuze ko hifashishijwe amafoto yafashwe na "satellite" n'ayo ku gishushanyo mbonera cy'Umujyi wa Kigali, cyakora ko bitashobotse kubona amafoto yo ku itariki ya 12/04/2010 ubwo Kaligirwa Rehema yavaga kwa Twahirwa Ahmed. Gatsirombo Egide agaragaza ko ku itariki ya 19/06/2008 inzu iburanwa yari yubatse ariko idasakaye, ko ku itariki ya 08/10/2010 yari isakaye ifite n'ubusitani butoshye bigaragara ko yari inzu ituwemo, ifoto yo kuri iyo tariki ikaba idatandukanye n'iyo ku itariki ya 15/01/2017. Avuga ko amaze kubona amafoto yasuye iyi nzu, muri rusange agasanga ituzuye neza, finissage yayo ari iya sima ivanze n'umucanga, nayo ahenshi ikaba yari irengeje imyaka itanu (5).

[15] Gatsirombo Egide asobanura ko kugeza ku itariki 08/10/2010 agaciro k'ubwubatsi, inzu n'ubusitani kanganaga na miliyoni makumyabiri, ibihumbi magana atanu na mirongo ine n'icyenda n'amafaranga magana cyenda mirongo itanu n'atanu (20.549.955 Frw) hatarimo ak'ubutaka, ku itariki ya 08/10/2017 kakaba kari kageze kuri miliyoni mirongo itatu na zirindwi, ibihumbi magana icyenda na mirongo inani na bibiri n'amafaranga magana arindwi na cumi n'atatu (37.982.713 Frw). Asobanura ko bitashobotse ko haboneka ibiciro by'ubutaka bya mbere y'umwaka wa 2015, ariko ko agaciro k'ubutaka ubu kangana na miliyoni makumyabiri n'eshatu n'ibihumbi ijana na makumyabiri n'umunani (23.128.000 Frw) akurikije ibipimo byashyizweho n'Urugaga rw'abagenagaciro. Avuga ko kugeza ubwo yakoraga raporo, inzu iburanwa yari ifte agaciro ka miliyoni mirongo itandatu n'imwe, ibihumbi ijana na cumi n'amafaranga magana arindwi na cumi n'atanu (61.110.713 Frw) habariwemo ubutaka n'imirimo yakozwe hanze.

[16] Ku byerekeranye n'agaciro k'imirimo Twahirwa Ahmed yongeye ku nzu kuva ku itariki ya 08/10/2010 kugeza ubu, Gatsirombo Egide asobanura ko ari gato cyane, ko iyo ako gaciro katageze kuri 5 % batiririrwa bakabara. Asobanura ko 10 % by'agaciro kagiye kiyongera ku nzu nk'uko bigaragara muri raporo, bitavuze ko ari ibikorwa Twahirwa Ahmed yongeraga ku nzu, ko ahubwo ari agaciro k'umutungo kagiye kiyongera uko igihe cyagiye gishira bitewe n'ibiciro biri ku isoko.

[17] Me Idahemuka Tharcisse avuga ko ibikorwa by'ibanze byakozwe ku nzu mbere y'umwaka wa 2010 Kaligirwa Rehema atarava mu rugo, ko ibindi bike Twahirwa Ahmed yabishyizeho amaze kujuririra urubanza rwari rwategetse ko bagomba kugabana. Avuga kandi ko muri rusange agaciro kahawe inzu iburanwa ari gato cyane (sous estimé), urebye aho inzu iherereye n'agaciro k'ubutaka uyu munsi.

[18] Me Umurungi Mireille yemeranya n'umugenagaciro ku gaciro yahaye umutungo uburanwa nk'uko yakerekanye muri raporo ye, gusa akanenga ko atashoboye kwerekana agaciro ubutaka bwari bufite mu mwaka wa 2008 kugeza mu mwaka wa 2010 kandi ari ngombwa kugira

ngo hamenyekane neza agaciro uwo mutungo wari ufite icyo gihe ari nabwo Kaligirwa Rehema yavaga mu rugo kuko ari wo bagomba kugabana.

UKO URUKIKO RUBIBONA

[19] Ku byerekeye uburenganzira bw'ababanaga nk'umugabo n'umugore ariko batarasezeranye mu buryo bwemewe n'amategeko, ingingo ya 39 y'Itegeko n° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, iteganya ko *"ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikijwe ihame ry'ubushyingiranwe bw'umugabo umwe n'umugore umwe. Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa".*

[20] Ingingo ya 108 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko *"Ibimenyetso bicukumbuwe no gusesengura urubanza ni ibimenyetso bitacukumbuwe n'amategeko, bicukumburwa n'ubwenge n'ubushishozi bw'abacamanza. Abacamanza bagomba kwemera gusa ibyo bimenyetso iyo bikomeye, bisobanuye kandi bihuje".*

[21] Ku birebana n'uru rubanza, inyandiko ziri muri dosiye zigaragaza ko Twahirwa Ahmed adahakana ko yabanye na Kaligirwa Rehema nk'umugabo n'umugore, ibyo bikaba binagaragarira mu mwanzuro we wo kwiregura mu Rukiko Rwisumbuye rwa Nyarugenge wakozwe na Me Uwamungu Jean Marie Vianney aho yasobanuye ko babanye kuva mu mwaka wa 1996 (C. 65), bakaba baratandukanye ku itariki ya 12/04/2010 nk'uko bigaragazwa n'inyandiko yo kwiyambura umugabo yanditswe na Kaligirwa Rehema kuri iyo tariki (C. 74).

[22] Izi nyandiko zigaragaza kandi ko Twahirwa Ahmed mu gihe yabanaga na Kaligirwa Rehema yakoze mu Muryango w'Abibumbye (C.97-106), ku itariki ya 04/09/2007 Twahirwa Ahmed agura inzu na Rutihimbuguza Claude iherereye mu mu Kagari ka Bwiza, Umurenge wa Masaka ku mafaranga miliyoni imwe n'ibihumbi magana abiri (1.200.000 Frw), bukeye bwaho ku itariki ya 05/09/2007 agura indi nzu na Habamutaki Hamimu nayo iri i Masaka, mu Kagari ka Bwiza ku mafaranga miliyoni imwe n'ibihumbi magana atatu (1.300.000 Frw), ibi bibanza byombi akaba ari byo byahujwe byandikwa kuri n° 1627, ari naho hubatswe inzu iburanwa. Ku rundi ruhande, ku itariki ya 01/10/2008 Kaligirwa Rehema yari yasinye amasezerano y'akazi muri PRO-FEMMES/TWESE HAMWE yagombaga kurangira ku itariki ya 30/09/2009 (C. 45) aza kongerwaho ukwezi kumwe ku itariki ya 13/10/2009 (C. 43), iki gihe nabwo bakaba bari bakibana.

[23] Urukiko rw'Ikirenga, rushingiye ku ngingo ya 39 y'Itegeko n° 59/2008 ryo ku wa 10/09/2008 ryibukijwe haruguru, rurasanga ubwo Twahirwa Ahmed na Kaligirwa Rehema bungutse inzu iburanwa mu gihe babanaga nk'umugabo n'umugore ariko batarashyingiranywe nk'uko bombi babyemeranywaho, bagomba kuyigabana mu gihe batagishoboye gukomeza kubana, kuko bigaragara ko yabonetse bombi babigizemo uruhare nk'uko byerekanywe haruguru, mu gihe babanaga buri wese akaba hari ibyo yinjizaga mu rugo kandi byagize uruhare mu kurutunga no kurwungura imitungo, bityo ntawe ugomba kuyiharira.

[24] Iki gitekerezo ni nacyo gikubiye mu rubanza n° RS/Inconst/Pén. 0003/10/CS rwa Gatera Johnson na Kabalisa Teddy, aho Urukiko rwavuze ko *"Mu gihe ababanaga nk'umugabo n'umugore batarashyingiranywe bahagaritse kubana, kugira ngo bagabane umutungo, ni uko bagomba kuba bawufitanye cyangwa barawushakanye. Kugira uburenganzira ku mutungo ntibishingiye gusa ku kuba barabanye nk'umugabo n'umugore batarashyingiranywe, ahubwo bigomba kuba bigaragara ko bawufitanye cyangwa ko bawushakanye"[1], ndetse akaba ari ko byemejwe no mu zindi manza zitandukanye zaciwe n'uru Rukiko[2].*

[25] Ku birebana n'agaciro k'inzu ababuranyi bagomba kugabana, Twahirwa Ahmed avuga ko Kaligirwa Rehema agomba kubona uruhare ku gaciro inzu yari ifite kugera ku itariki ya 12/04/2010 ubwo yavaga mu rugo, ko kugeza icyo gihe yari 1 RS/Inconst/Pén.0003/10/CS, Gatera Johnson Vs Kabalisa Teddy, Icyegeranyo cy'ibyemezo by'Inkiko, Igitabo cya kabiri 2011, n° 9, Mata, 2011, P.7-16. 2 Reba urubanza RS/REV/INJUST/CIV 0007/15/CS hagati ya Nyirakamana Marcianna n'abandi na Mukasharangabo Eugénie n'abandi, Icyegeranyo cy'ibyemezo by'inkiko, V. 2-2017, Gicurasi, 2017, p. 95-123. igeze kuri "linteau" (hejuru y'amadirishya), ariko Kaligirwa Rehema we akaba asanga bagomba kugabana agaciro kose k'inzu ifite ubungubu kuko yasize inzu yuzuye, ko kuva yagenda nta kindi gikorwa kigaragara Twahirwa Ahmed yongeyeho, uretse cloture (urugo) itaranamara amezi abiri (2).

[26] Urukiko rw'Ikirenga rurasanga muri raporo ye, umugenagaciro yaravuze ko atabashije kubona agaciro k'ubutaka ka mbere ya 2015 n'amafoto yo ku itariki ya 12/04/2010, ko ariko ayo yabonye, ni ukuvuga ayo ku itariki ya 19/06/2008 n'ayo ku itariki ya 08/010/2010, ari kimwe mu byifashishijwe mu gukusanya amakuru yerekeye inzu iburanwa. Twahirwa Ahmed nawe ntiyabashije kugaragaza agaciro iyi nzu yari ifite kugeza ku itariki ya 12/04/2010 ubwo Kaligirwa Rehema yavaga mu rugo, uretse kuvuga gusa ko itari isakaye, ibyo akabivuga yishingikirije inyandiko yo ku itariki ya 26/10/2010 aho Ubuyobozi bw'Umurenge wa Masaka bwamuhaye uburenganzira bwo gukomeza kubaka, bugasobanura ko yemerewe kubaka kuva ku madirishya agakora igisenge n'amasuku; ibi ariko Urukiko rw'ikirenga rusanga ataribyo kubera ko umugenagaciro yerekanye ko ku itariki ya 08/10/2010, ni ukuvuga mbere y'itariki Twahirwa Ahmed avuga ko yemerewe gusubukura imirimo, iyi nzu yari isakaye ifite n'ubusitani butoshye nk'uko bigaragara no ku ifoto iri muri raporo yashyikirijwe Urukiko.

[27] Urukiko rw'Ikirenga rurasanga kuva ku itariki ya 12/04/2010 ubwo Kaligirwa Rehema yavaga mu rugo kugeza ku itariki ya 26/10/2010 nta yindi mirimo Twahirwa Ahmed yongeye gukora ku nzu iburanwa kuko nawe ubwe yemera ko ubuyobozi bwari bwaramuhagaritse. Urukiko rurasanga kandi, rushingiye ku byatangajwe n'umuhanga rwashyizeho ubwo yasobanuraga raporo yakoze, nta tandukanyirizo riri hagati y'ifoto y'inzu yo ku itariki ya 08/10/2010 Twahirwa Ahmed ataremererwa gusubukura imirimo y'ubwubatsi nk'uko abivuga, n'iyo ku itariki ya 15/01/2017, ibi bikaba byumvikanisha ko kuva Kaligirwa Rehema yava mu rugo nta mirimo igaragara yigeze ikorwa ku nzu iburanwa.

[28] Raporo yakozwe n'umuhanga ndetse n'ibisobanuro yahaye Urukiko ubwo yayisobanuraga imbere y'Urukiko rw'Ikirenga, iragaragaza ko ku itariki ya 08/10/2010 inzu

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[1] Reba urubanza RS/Inconst/Pén.0003/10/CS, rwaciwe n'Urukiko rw'Ikirenga kuwa 07/01/2011 hagati ya Gatera Johnson na Kabalisa Teddy, Icyegeranyo cy'ibyemezo by'Inkiko, Igitabo cya kabiri 2011, n° 9, Mata, 2011, P.7-16.
[2] Reba urubanza RS/REV/INJUST/CIV 0007/15/CS hagati ya NYIRAKAMANA Marcianna n'abandi na Mukasharangabo Eugénie n'abandi, Icyegeranyo cy'ibyemezo by'inkiko, V. 2-2017, Gicurasi, 2017, p. 95-123.

Twahirwa Ahmed aburana na Kaligirwa Rehema yari ifite agaciro ka miliyoni makumyabiri n’ibihumbi magana atanu na mirongo ine n’icyenda n’amafaranga magana icyenda na mirongo itanu n’atanu (20.549.955 Frw) hatabariwemo agaciro k’ubutaka. Iyo raporo igaragaza kandi ko agaciro k’iyo nzu kagiye kiyongera ku gipimo cya 10 % buri mwaka, ku buryo ubu agaciro kayo kageze kuri miliyoni mirongo itatu na zirindwi, ibihumbi magana icyenda na mirongo inani na bibiri n’amafaranga magana arindwi na cumi n’atatu (37.982.713 Frw).

[29] Ku birebana n’ubutaka inzu iburanwa yubatseho, n’ubwo umugenagaciro atashoboye kumenya agaciro bwari bufite igihe Kaligirwa Rehema yavaga mu rugo, ashingiye ku bipimo byashyizweho n’Urugaga rw’abagenagaciro, yashoboye kugaragariza Urukiko ko ubu ubwo butaka bufite agaciro ka miliyoni makumyabiri n’eshatu n’ibihumbi ijana na makumyabiri n’umunani (23.128.000 Frw).

[30] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rw’Ikirenga rurasanga Twahirwa Ahmed na Kaligirwa Rehema bagomba kugabana ku buryo bungana agaciro kose k’inzu ifite uyu munsi habariwemo n’agaciro k’ubutaka yubatseho, kangana na miliyoni mirongo itandatu n’imwe, ibihumbi ijana na cumi n’amafaranga magana arindwi na cumi n’atanu (61.110.713 Frw), kubera ko Twahirwa Ahmed atabashije kugaragaza agaciro inzu yari ifite Kaligirwa Rehema ava mu rugo n’ak’ibyo yongeyeho aho ahaviriye, ntiyanabasha kuvuguruza ibyo umugenagaciro yavuze ko ku itariki ya 08/10/2010 yari isakaye nyamara ibaruwa yo ku itariki ya 26/10/2010 avuga imwemerera kubaka kuva ku madirishya nk’uko byagaragajwe haruguru, ibi bikaba bituma Urukiko rwemeza, rushingiye ku bimenyetso bicukumbuye nk’uko biteganywa n’ingingo ya 108 y’Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, ko kuva Kaligirwa Rehema atandukanye na Twahirwa Ahmed nta kintu kigaragara cyiyongeye ku nzu iburanwa, uretse ibyo Twahirwa Ahmed yaba yarongeyeho atabashije kugaragariza agaciro ndetse n’umuhanga akaba atarabivuze, kuko nawe yasanze bifite agaciro gake cyane nk’uko yabisobanuriye Urukiko.

Kumenya niba hari umutungo Kaligirwa Rehema yatwaye agomba kugabana na Twahirwa Ahmed.

[31] Me Umurungi Mireille avuga ko hari imitungo Kaligirwa Rehema yasahuye mu rugo, irimo imodoka Toyota Carina yagurishije ku itariki ya 21/08/2009 ku mafaranga miliyoni eshanu n’ibihumbi magana atatu (5.300.000 Frw), salon de coiffure yagurishije mu mwaka wa 2007 yari ifite agaciro ka miliyoni eshatu (3.000.000 Frw), wakongeraho n’inyungu yayibonyemo mu gihe cy’imyaka umunani bikangana na miliyoni zirindwi n’ibihumbi magana inani (7.800.000 Frw) hamwe n’iduka ryari rifite agaciro ka miliyoni zirenga icumi (10.000.000 Frw), akavuga ko ibyo byabaye Kaligirwa Rehema akibana na Twahirwa Ahmed, ko rero bakwiye kugabana iyo mitungo hashingiwe ku ngingo ya 39 y’Itegeko n° 59/2008 ryo ku wa 10/09/2008 iteganya ko iyo abantu babana batarasezeranye bagabana umutungo muhahano wose bashatse bakiri kumwe, nyamara Urukiko Rukuru rwo rukaba rutaragize icyo rubivugaho mu gihe bari basabye ko nabyo babigabana.

[32] Ku byerekeranye n’imitungo Kaligirwa Rehema yaba yaratwaye Me Umurungi Mireille asaba ko nayo yayigabana na Twahirwa Ahmed, Me Idahemuka Tharcisse avuga ko iki ari ikirego gishya ababuranyi batigeze bavugaho mu nkiko zibanza, kandi ko nta masezezerano ababuranyi bigeze bagirana mu rwego rw’amategeko ku buryo bagabana hakurikijwe uburyo bwo gucunga umutungo w’abashyingiranywe (régime matrimonial). Naho iby’imodoka

Kaligirwa Rehema yagurishije, asaba ko Twahirwa Ahmed agaragaza ko bafatanyije kuyigura nk'uko na we yagaragaje uruhare rwe (participation) mu kubaka inzu iburanwa.

UKO URUKIKO RUBIBONA

[33] Ingingo ya 168 y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "*Ku rwego rw'ubujurire ntihashobora kuregerwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire"*.

[34] Ku birebana n'ibyo Twahirwa Ahmed asaba ko mu bigabanywa hagomba no kubamo imodoka na salon de coiffure avuga ko yashakanye na Kaligirwa Rehema, Urukiko rw'Ikirenga rushingiye ku ngingo ya 168 y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 rimaze kuvugwa, rurasanga ari ikirego gishya, bityo rukaba rudakwiye kubisuzuma ku rwego rw'ubujurire mu Rukiko rw'Ikirenga kuko nta hagaragara ko byigeze biburanwaho mu nkiko zo hasi.

Ku byerekeranye n'indishyi zisabwa muri uru rubanza

[35] Me Umurungi Mireille asaba ko Twahirwa Ahmed ahabwa amafaranga miliyoni eshanu (5.000.000 Frw) y'igihembo cya Avoka na miliyoni imwe (1.000.000 Frw) y'indishyi z'akababaro kuko Urukiko Rukuru rutazihaye agaciro, ariko Me Idahemuka Tharcisse we agasanga zidakwiye kuko Twahirwa Ahmed ari we munyamakosa nk'uko bigaragara mu ibaruwa yandikiye Kaligirwa Rehema amusaba imbabazi.

[36] Me Idahemuka Tharcisse avuga ko ahubwo atanze ubujurire bwuririye ku bundi asaba ko ari Twahirwa Ahmed ukwiye guha Kaligirwa Rehema indishyi yavugiye mu nama ntegurarubanza zigizwe na miliyoni cumi n'umunani (18.000.000 Frw) z'igihombo yamuteje kuko ari we ubyaza inzu umusaruro wenyine, n'igihembo cya Avoka kingana na miliyoni enye n'ibihumbi magana atanu (4.500.000 Frw). Kuri izo ndishyi, Me Umurungi Mireille avuga ko indishyi zikomoka ku gihombo Kaligirwa Rehema avuga yagize nta shingiro zifite kuko inzu itaruzura, naho igihembo cya Avoka Urukiko rukaba ruzakigena mu bushishozi bwarwo.

UKO URUKIKO RUBIBONA

[37] Ku birebana n'indishyi zisabwa na Twahirwa Ahmed, Urukiko rw'Ikirenga rurasanga ntazo Kaligirwa Rehema akwiye kumuha kuko ubujurire bwe nta shingiro bifite, akaba ari we ukwiye kwirengera ibyo yatanze ashaka Avoka umuburanira.

[38] Ku birebana n'indishyi zisabwa na Kaligirwa Rehema, Urukiko rw'Ikirenga rurasanga amafaranga y'igihombo avuga yatejwe n'uko Twahirwa Ahmed ari we wenyine ubyaza inzu umusaruro ntayo yahabwa, kuko atabasha kugaragaza uburyo Twahirwa Ahmed abona wenyine umusaruro ku nzu bashakanye kugeza ku gaciro avuga ka miliyoni cumi n'umunani (18.000.000 Frw), cyane cyane ko n'umugenagaciro yagaragaje ko itaruzura ku buryo yaba yaratangiye kubyazwa umusaruro.

[39] Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, Urukiko rw'Ikirenga rurasanga Twahirwa Ahmed akwiye guha Kaligirwa Rehema ibihumbi Magana inani (800.000 Frw) agenwe mu bushishozi bw'Urukiko kuko miliyoni enye n'ibihumbi magana atanu (4.500.000 Frw) asaba akabije kuba menshi kandi akaba atagaragaza uburyo ayabara.

Kumenya amafaranga agomba kwishyurwa umugenagaciro.

[40] Gatsirombo Egide, umugenagaciro washyizweho n'Urukiko, asaba Urukiko rw'Ikirenga gutegeka ababuranyi bakamwishyura ku kazi yakoze kubera ko kugeza ubu bananiwe kumvikana ku buryo azishyurwa. Avuga ko arebye ingano y'akazi yakoze, yakwishyurwa amafaranga ibihumbi magana atatu (300.000 Frw).

[41] Me Idahemuka Tharcisse uburanira Kaligirwa Rehema na Me Umurungi Mireille uburanira Twahirwa Ahmed bavuga ko amafaranga asabwa n'umugenagaciro akabije kuba menshi, ko akazi kakozwe atari kenshi ku buryo yakishyurirwa ibihumbi magana atatu (300.000 Frw).

UKO URUKIKO RUBIBONA

[42] Ingingo ya 6, igika cya gatatu, y'Iteka rya Minisitiri n° 002/08.11 ryo ku wa 11/02/2014 rigena amafaranga atangwa mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko *"Amafaranga ahabwa abaganga, abasemuzi, abahanga cyangwa izindi nzobere agenwa na Perezida w'inteko iburanisha y'urukiko akurikije ibihembo cyangwa impuzandengo y'ibihembo bisanzwe bitangwa mu rwego rw'umurimo bakora".*

[43] Hashingiwe ku Iteka rimaze kuvugwa, harebwe n'ingano y'akazi kakozwe n'umugenagaciro, Urukiko rw'Ikirenga rurasanga amafaranga ibihumbi magana atatu (300.000 Frw) asabwa n'umugenagaciro nk'uko bigaragara muri fagitire yagejeje ku Rukiko ku itariki ya 23/10/2017 ari mu rugero rukwiye, bityo akaba ari yo agomba kwishyurwa. Urukiko rurasanga kandi ari Twahirwa Ahmed ugomba kuyishyura kubera ko ubujurire yatanze nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko ubujurire bwa Twahirwa Ahmed nta shingiro bufite ;

[45] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Kaligirwa Rehema nta shingiro bufite ;

[46] Rwemeje ko nta gihindutse ku mikirize y'urubanza n° RCA 0352/14/HC/KIG rwajuririwe uretse ku byerekeye agaciro k'inzu igomba kugabanywa kasobanuwe n'igihembo cy'umugenagaciro hamwe n'igihembo cya Avoka;

[47] Rutegetse ko Twahirwa Ahmed na Kaligirwa Rehema bagabana ku buryo bungana inzu iri mu kibanza n° PC 10969 (UPI: 1/03/08/02/1627) giherereye mu Mudugudu wa Nyakagunga, Akagari ka Cyimo, Umurenge wa Masaka, Akarere ka Kicukiro, mu Mujyi wa Kigali, ifite agaciro ka miliyoni mirongo itandatu n'imwe, ibihumbi ijana na cumi n'amafaranga magana arindwi na cumi n'atatu (61.110.713 Frw);

[48] Rutegetse Twahirwa Ahmed kwishyura umugenagaciro Gatsirombo Egide amafaranga ibihumbi magana atatu (300.000 Frw);

[49] Rutegetse Twahirwa Ahmed kwishyura Kaligirwa Rehema ibihumbi magana inani by’amafaranga y’u Rwanda (800.000 Frw) y’igihembo cya Avoka;

[50] Ruvuze ko ingwate y’amagarama yatanzwe na Twahirwa Ahmed ihwanye n’ibyakozwe muri uru rubanza.