KARIGIRWA v MUZIMA N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00014/2019/CA (Karimunda, P.J, Munyangeri na Nyirandabaruta, J.) 02 Ukuboza 2019]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kwigarika intumwa – Umuburanyi witabye bigaragara ko atakwiburanira ntanagaragaze impamvu adafite Avocat – Inzira yo guhagararirwa, kunganirwa cyangwa kuburanirwa na Avoka igamije gufasha umuburanyi ufite ubushake bwo kuburana, kuko ufite ubushake bwo kuburana ariko udafite ubushobozi bwo gushaka avoka, abigaragaza agashakirwa avoka w'ubuntu – Umuburanyi wareze akaniyishyurira abavoka bamuburaniye ariko imyitwarire ye ikagaragaza kudindiza no gutinza urubanza, bituma urubanza rwe rusibwa mu bitabo by'urukiko kuko biba bigaragara ko nta nyungu agifite mu rubanza.

Incamake y'ikibazo: Uru rubanza ruturuka kuri cyamunara y'umutungo wari uwa Muzima Rutikanga watwejwe na Me Mutuyimana Clementine ugurwa na Nambajimana. Mu rubanza rwaciwe n'Urukiko rw'Ubucuruzi n'Urukiko Rukuru rw'Ubucuruzi, Muzima Rutikanga ntiyabashije kwerekana ibimemyetso by'ibyo aregera, inkiko zitegeka ko ikirego cye nta shingiro gifite.

Urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rwaje gutambamirwa na Karigirwa abaregwa batanga inzitizi ko rutakwakirwa rwatambamiwe impitagihe ariko igihe rutaracibwa yigarika Avoka wamuburaniraga n'uwamusimbuye nawe arongera aramwigarika. Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo ku bwigarike bw'Abavoka bwari bwatanzwe na Karigirwa maze rwemeza ko nta shingiro bufite; ko ibyakozwe n'Abavoka bamuburaniraga bifite ishingiro. Rwahise rukurikizaho gusuzuma ibjyanye n'inzitizi yo gutambamira urubanza yari yatanzwe n'abaregwa, maze rwemeza ko ikirego cya Karigirwa kitakiriwe.

Karigirwa yajuriye mu Rukiko rw'Ubujurire avuga ko atamenye imanza zaburanwe na Muzima Rutikanga asaba ko ikirego cyagombaga kwakirwa. Yagaragaje kandi Urukiko Rukuru rw'ubucuruzi rutahaye agaciro impamvu yatangaga yigarika abamuburaniye kuko ngo harimo akagambane ndetse nta butakambe bamukoreye ku karengane yagiriwe.

Urubanza rwaburanishijwe yaba Karigirwa na Muzima Rutikanga bafite abavoka ariko baza nabo kubigarika babasimbuza abandi. Mu gihe urubanza rwari rutaranasomwa Muzima Rutikanga yihana umwe mu bacamnza, urukiko rw'Ikirenga rutarafata umwanzuro, Karigirwa yongera kwigarika umwavoka wamuburaniraga. Urukiko rw'Ikirenga rwemeje ko ikirego cyo kwihana umucamanza cyatanzwe na Muzima Rutikanga nta shingiro gifite naho ku rubanza rw'ubwigarike Karigirwa yitaba nta mwunganizi afite ariko asaba urukiko gutegereza uwo yihannye ngo aze bumvikana cyangwa urukiko rugaca urubanza rushingiye ku myanzuro yatanze. Abaregwa basabye urukiko gufata icyemezo gikwiye rushingiye ku myitwarire ya Karigirwa kuko yagaragaraga nko gutinza urubanza.

Incamake y'icyemezo: Umuburanyi wareze udashobora kwiburanira kandi akaba atagaragaza impamvu yitabye nta avoka, bisobanuye ko nta nyungu aba afite muri urwo rubanza; bityo ikirego cye gisibwa mu bitabo by'Urukiko.

Ikirego cy'ubwihane y'umwavoka gisibwe mu bitabo by'urukiko. Hakurikiyeho isomwa ry'urubanza nº RCOMAA 00014/2019/CA.

Amategeko yashingiweho:

Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 54, 55 na 85.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Muzima Rutikanga Frédéric yareze Mutuyimana Clémentine n'Umwanditsi Mukuru mu Kigo cy'Igihugu gishinzwe Iterambere (RDB) mu Rukiko rw'Ubucuruzi rwa Nyarugenge, asaba Urukiko gutesha agaciro inyandiko-mvugo ya cyamunara yo ku wa 07/08/2015 ku mutungo UPI: 1/02/04/01/1434 no kwemeza ko ari we watsindiye kwegukana uwo mutungo muri cyamunara. Muri urwo rubanza hagobokeshejwemo Nambajimana François wari wegukanye uwo mutungo muri cyamunara.

[2] Mu rubanza nº RCOM 1899/15/TC/NYGE rwaciwe ku wa 31/03/2016, Urukiko rwasanze Muzima Rutikanga Frédéric atagaragaza ibimenyetso by'ibyo aregera, ategekwa kwishyura Mutuyimana Clémentine na Nambajimana François 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri buri wese, rwemeza kandi ko adakwiye gusubizwa 50.000 Frw yatanzeho ingwate y'amagarama. Muzima Rutikanga Frédéric yajuririye mu Rukiko Rukuru rw'Ubucuruzi, urubanza nº RCOMA 00234/2016/CHC/HCC rucibwa ku wa 28/07/2016, Urukiko rwemeza ko ubujurire bwe nta shingiro bufite, ko nta gihindutse ku mikirize y'urubanza nº RCOM 1899/15/TC/NYGE, ategekwa na none kwishyura Mutuyimana Clémentine na Nambajimana François 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri buri wese.

[3] Karigirwa Félicité yatambamiye urubanza nº RCOMA 00234/2016/CHC/HCC, avuga ko mu gika cya 6 n'icya 9 byarwo hakozwemo amakosa yamuteye igihombo, asaba ko akosorwa hanyuma akabiherwa indishyi. Mutuyimana Clémentine na Nambajimana François batanze inzitizi yo kutakira ikirego kuko cyarengeje igihe, banavuga ko impamvu KARIGIRWA Félicité atanga zo gutambamira urubanza nta shingiro zifite, basaba indishyi. Muzima Rutikanga Frédéric yasabye ko ikirego cya Karigirwa Félicité gisuzumanwa ubwitonzi akarenganurwa, nawe asoza asaba indishyi. Umwanditsi Mukuru mu Kigo cy'Iterambere ry'Urwanda nta myanzuro yatanze.

[4] Ku wa 20/06/2018, mbere y'isomwa ry'urubanza ku nzitizi ryari riteganyijwe ku wa 22/06/2018, Karigirwa Félicité yavuze ko yigaritse Me Hakizimana Albert wamuburaniye, asaba ko habanza urubanza ku bwigarike. Mu iburanisha ry'ubwo bwigarike, yigaritse nanone Me Twagirumugabe Alexis wamuburaniraga.

[5] Ubwigarike bwombi bwasuzumiwe hamwe n'inzitizi yo kutakira ikirego cy'itambama, mu rubanza nº RCOMA 00443/2017/CHC/HCC rwaciwe ku wa 14/11/2018, Urukiko Rukuru

rw'Ubucuruzi rusanga ubwigarike nta shingiro bufite, rwemeza ko ibyakozwe na Me Hakizimana Albert na Me Twagirumugabe Alexis mu izina rya Karigirwa Félicité mu maburanisha yabaye ku wa 06/06/2018 no ku wa 10/10/2018 bigumanye agaciro kabyo kandi ko aribyo bikwiye kugenderwaho mu gufata icyemezo ku nzitizi, rusanga inzitizi yatanzwe na Mutuyimana Clémentine na Nambajimana François ifite ishingiro, rwanzura ko ikirego cya Karigirwa Félicité gitambamira urubanza nº RCOMA 00234/2016/CHC/HCC kitakiriwe, atagekwa kwishyura Me Hakizimana Albert 500.000 Frw y'indishyi z'akababaro, kwishyura Mutuyimana Clémentine 1.000.000 Frw y'indishyi z'ikurikiranarubanza, kwishyura Nambajimana François 1.000.000 Frw y'indishyi zo gusiragizwa mu manza, iz'ikurikiranarubanza n'igihembo cya Avoka, rutegeka ko 75.000 Frw y'amagarama Karigirwa Félicité yatanze atambamira urubanza aherera ku Isanduku ya Leta.

[6] Karigirwa Félicité yajuririye mu Rukiko rw'Ubujurire, avuga ko kuri Me Hakizimana Albert, Urukiko rwemeje ibinyuranye n'ibiri mu nyandiko-mvugo y'iburanisha, ruzinzika ibirebana na *e-mail* Muzima Rutikanga Frédéric yanditse nyamara ariyo igaragaza akagambane yakorewe, kuri Me Twagirumugabe Alexis, avuga ko uyu yananiwe gutakambira inzego zibishinzwe ngo agaragaze akarengane ke, amwigaritse ntiyitabira iburanisha kuri ubwo bwigarike, byumvikanisha ko Urukiko rutari kwemeza ko ikirego cy'ubwigarike kuri we nta shingiro gifite iyo ruba rutabifitemo inyungu. Ku bijyanye no kutakira ikirego cyo gutambamira urubanza, avuga ko atigeze amenya imanza Muzima Rutinga Frédéric yaburanye.

[7] Urubanza rwashyizwe kuri gahunda y'iburanisha mu ruhame ku wa 29/10/2019, uwo munsi Karigirwa Félicité yitaba atunganiwe, avuga ko atazi icyabujije Me Cyubahiro David, umwunganira wanasinyiye iyo tariki mu nama ntegurarubanza, kwitabira iburanisha. Me Cyubahiro David yahanishijwe ihazabu mbonezamubano ya 300.000 Frw kubera gutinza urubanza ku bushake hashingiwe ku biteganywa n'ingingo ya 18 y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Uwo munsi, Me Cyubahiro David yanditse avuga ko yari yumvikanye na Karigirwa Félicité ko natamwishyura igihembo cya Avoka bumvikanye atazitabira iburanisha, ko ariko yibagiwe kubimenyesha Urukiko hakiri kare.

[8] Iburanisha ryimuriwe ku wa 31/10/2019, Karigirwa Félicité asabwa kuvugana na Me Cyubahiro David akaba yishyuye ihazabu yaciwe kuri uwo munsi cyangwa agashaka undi Avoka. Uwo munsi ugeze, Karigirwa Félicité yavuze ko aburanirwa na Me Zitoni Pierre Claver kandi ko noneho yahisemo kutunganirwa, Muzima Rutikanga Frédéric yavuze ko yunganiwe na Me Vuguziga Valérie, Mutuyimana Clémentine ahagarariwe na Me Uwanyirigira Delphine, Umwanditsi Mukuru wa RDB ahagarariwe na Me Kayigi Kajuga Léon, Nambajimana François na Me Twagirumugabe Alexis bahagarariwe na Me Ngirimana Jean Pierre naho Me Hakizimana Albert atitabye ariko yarahamagawe mu buryo bukurikije amategeko.

[9] Me Zitoni Pierre Claver yasabye ko urubanza rusubikwa kugirango ajye gutegura imyanzuro, Urukiko rwemeza ko iburanisha rikomeza kuko ababuranyi bahawe umwanya uhagije wo kurutegura, rumwemerera icyakora kuzatanga inyandiko ikubiyemo imiburanire ye (note de plaidoirie). Iburanisha rigeze hagati, Muzima Rutikanga Frédéric yanze kuburanirwa na Vuguziga Valérie, asobanura ko nta masezerano y'imikoranire bafitanye, asaba ko urubanza ruhagarara kugirango Me Nsengiyumva Emmanuel bateguranye dosiye abanze aboneke. Urubanza rwimuriwe ku wa 01/11/2019.

[10] Uwo munsi iburanisha ryabereye mu ruhame Muzima Rutikanga Frédéric yunganiwe na Me Nsengimana Emmanuel, Mutuyimana Clémentine ahagarariwe na Me Uwanyirigira Delphine, Nambajimana François na Me Twagirumugabe Alexis bahagarariwe na Me Ngirimana Jean Pierre, Umwandisti Mukuru muri RDB ahagarariwe na Me Kayigi Kajuga Léon, Me Hakizimana Albert na KARIGIRWA Félicité batitabye, Me Zitoni Pierre Claver avuga ko yumvikanye na Karigirwa Félicité ko amuhagararira.

[11] Iburanisha rigeze hagati, Muzima Rutikanga Frédéric yavuze ko hari uburenganzira bwe buteganywa n'Itegeko-Nshinga butubahirijwe, ko yambuye Me Nsengimana Emmanuel ububasha bwo kumwunganira, asaba ko iburanisha risubikwa. Urukiko rwibukije ko itegeko riteganya ko mu Rukiko rw'Ubujurire no mu Rukiko rw'Ikirenga ababuranyi bagomba kuba bafite ababunganira mu mategeko cyangwa ababahagarariye (abavoka) ku mpamvu z'uko izi nkiko arizo zifata ibyemezo ku rwego rwa nyuma, ko ari ngombwa ko umuburanyi aburana ibyo amategeko ateganya byose byitaweho, rusanga kuba Muzima Rutikanga Frédéric yambuye Avoka we ububasha kandi ari we wari wasabye ko iburanisha risubikwa kugirango aboneke bikwiye gufatwa nko kudashaka kunganirwa, rutegeka ko afatwa nk'umuburanyi wahamagajwe mu buryo bukurikije amategeko ntiyitabire iburanisha, iburanisha rigakomeza atongeye guhabwa ijambo.

[12] Iburanisha ryarapfundikiwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 08/11/2019 saa tanu. Ku wa 05/11/2019, Muzima Rutikanga Frédéric yihanye umwe mu bagize inteko, mu gihe urubanza ku bwihane rutaracibwa (ku wa 08/11/2019), Karigirwa Félicité yigarika Me Zitoni Pierre Claver wamuhagarariye mu iburanisha ryo ku wa 31/10/2019 no ku wa 01/11/2019.

[13] Ku bijyanye n'ubwihane, Urukiko rw'Ikirenga rwaciye urubanza nº RS/RECUS/RCOM 00002/2019/SC ku wa 15/11/2019, rusanga ikirego cy'ubwihane nta shingiro gifite, Muzima Rutikanga Frédéric ategekwa kwishyura ihazabu mbonezamubano yo gutinza urubanza ingana na 200.000 Frw.

[14] Iburanisha ku bwigarike bwa Me Zitoni Pierre Claver ryashyizwe ku wa 02/12/2019, Urukiko rusanga Muzima Rutikanga Frédéric atarishyura ihazabu mbonezamubano yaciwe n'Urukiko rw'Ikirenga, Umwanditsi Mukuru wa RDB, Nambajimana François, Me Hakizimana Albert na Me Twagirumugabe Alexis batitabye ariko baramenyeshejwe itariki y'iburanisha mu buryo bukurikije amategeko, Mutuyimana Clémentine ahagarariwe na Me Uwanyirigira Delphine, Me Zitoni Pierre Claver ahagarariwe na Me Mitsindo Tom naho Karigirwa Félicité yitabye atunganiwe, avuga ko Avoka we yamusabye gushaka Me Zitoni Pierre Claver kugira ngo bumvikane, umunsi w'iburanisha ugera atarabona Me Zitoni Pierre Claver.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

Kumenya niba ikirego cy'ubwigarike bwakorewe Me Zitoni Pierre Claver gikwiye gusibwa.

[15] Karigirwa Félicité avuga ko ataribusobanure impamvu zatumye yigarika Me Zitoni Pierre Claver kubera ko Avoka we yamusabye kumvikana n'uwo yigaritse none iburanisha rikaba risanze atarabona Me Zitoni Pierre Claver ngo bumvikane. Asaba uru Rukiko gutegereza cyangwa rugaca urubanza rushingiye ku myanzuro yatanze.

[16] Me Uwanyirigira Delphine uhagarariye Mutuyimana Clémentine, avuga ko nubwo ntacyo uwo ahagarariye yari akwiye kuvuga kuri iki kirego kuko kitamureba, asaba uru Rukiko kubifatira icyemezo gikwiye, ariko rukibuka ko imyitwarire ya Karigirwa Félicité igamije gutinza urubanza.

[17] Me Mitsindo Tom, uhagarariye Me Zitoni Pierre Claver, nawe asaba uru Rukiko gufata icyemezo gikwiye kuri uru rubanza.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 54, igika cya mbere, y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Iyo urega atitabye Urukiko nta mpamvu, uregwa ashobora gusaba ko urubanza rusibwa cyangwa agasaba ko ruburanishwa mu mizi yarwo, urubanza ruciwe rukazafatwa nk'aho rwaburanishijwe ababuranyi bahari, keretse iyo urukiko, ku nyungu z'ubutabera kandi mu buryo buteganywa n'iri tegeko, rusanze ari ngombwa ko urubanza rwimurirwa ku yindi tariki kugirango urega yongere ahamagazwe."

[19] Ingingo ya 55, igika cya 2, y'Itegeko nº 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize n'imikorere y'Ubutegetsi bw'Ubucamanza iteganya ko "Urukiko rw'Ubujurire ruburanisha imanza rushingiye ku mategeko agenga imiburanishirize y'imanza mu Rwanda. Nta muburanyi wemerewe kuburanira mu Rukiko rw'Ubujurire atunganiwe n'avoka."

[20] Naho ingingo ya 85, igika cya 5, y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "mu Rukiko rw'Ikirenga no mu Rukiko rw'Ubujurire nta muburanyi wemerewe kwiburanira atunganiwe na Avoka."

[21] Dosiye y'urubanza igaragaza ko inyandiko yo kwigarika Me Zitoni Pierre Claver yakozwe inashyirwa muri dosiye na Karigirwa Félicité ku wa 08/11/2019 hagati aho hakaba hari hategerejwe icyemezo cy'Urukiko rw'Ikirenga ku bwihane bwakorewe umwe mu bagize inteko na Muzima Rutikanga Frédéric. Ku wa 18/11/2019, ababuranyi bose bamenyeshwa kopi y'urubanza ku bwihane rwaciwe n'Urukiko rw'Ikirenga ku wa 15/11/2019, ku wa 21/11/2019, Ubwanditsi bw'Urukiko bumenyesha Karigirwa Félicité ko urubanza ku bwigarike ruzaburanishwa ku wa 02/12/2019, ku wa 27/11/2019, Ubwanditsi bw'Urukiko bumwibutsa ko agomba kuza muri urwo rubanza afite undi mu Avoka utari Me Zitoni Pierre Claver.

[22] Urukiko rurasanga impamvu umushingamategeko yateganyije by'umwihariko ko mu Rukiko rw'Ikirenga no mu Rukiko rw'Ubujure ababuranyi baba iteka bunganiwe ari uko izo nkiko zishinzwe gutanga umurongo ku zindi nkiko n'umucyo ku isesengura ry'ibabazo ziba zashyikirijwe cyangwa amategeko ziba zashingiyeho n'aba yashingiweho n'izindi nkiko, akaba ari muri urwo rwego avoka, hejuru yo guhagararira, kunganira cyangwa kuburanira umuburanyi,

aba afite n'inshingano nyamukuru yo gufasha ubutabera nk'umunyamategeko w'umunyamwuga, izo nshingano akaba ari nazo zimutegeka kwanzura no gusobanura imyanzuro ye imbere y'Urukiko.

[23] Urukiko rurasanga urubanza rw'iremezo muri iyi dosiye rusuzumwamo ikibazo cyo kwigarika ba Avoka mu Rukiko Rukuru rw'Ubucuruzi, Karigirwa Félicité akaba yarabanje kwigarika Me Hakizimana Albert, muri urwo rubanza aburanirwa na Me Twagirumugabe Alexis, nawe nyuma aramwigarika, icyemezo cyafashwe kuri ubwo bwigarike akaba ari bimwe mu byo yajuririye muri uru Rukiko, rumaze gupfundikirwa yigarika na none Me Zitoni Pierre Claver, wamuhagarariye, mu rubanza ku bwigarike avuga ko avoka we wari kumuburanira yamugiriye inama yo kugana inzira y'ubwumvikane, nyamara ikigaragarira uru Rukiko akaba ari uko inyandiko yo kwigarika yanditswe na Karigirwa Félicité ubwe, kugeza ku munsi w'iburanisha hakaba nta myanzuro yakozwe na Avoka we iri muri dosiye ndetse no mu gihe cy'iburanisha akaba atarabashije kubwira inteko izina ry'uwo Avoka waba waramusabye kugana inzira y'ubwumvikane.

[24] Urukiko rurasanga inzira yo guhagararirwa, kunganirwa cyangwa kuburanirwa na Avoka igamije gufasha umuburanyi ufite ubushake bwo kuburana, kuko ufite ubushake bwo kuburana ariko udafite ubushobozi bwo gushaka avoka, abigaragaza agashakirwa avoka w'ubuntu, ku bijyanye n'uru rubanza bikaba bigaragara ko Karigirwa Félicité asanzwe yiyishyurira abamwunganira cyangwa abamuhagararira, kuva ku wa 21/11/2019 amenyeshwa ko urubanza ruzaburanishwa ku wa 02/12/2019, cyangwa kuva ku wa 27/11/2019 amenyeshwa ko agomba gushaka avoka umwunganira cyangwa umuhagararira, akaba atarigeze agaragaza ko afite ikibazo cy'amikoro, imyitwarire ye ikaba ahubwo igamije kudindiza imirimo y'urukiko no gukomeza gutinza urubanza, bityo kuba yitabye adafite avoka bikaba bikwiye gufatwa nko kutitabira iburanisha nta mpamvu kandi ari we wareze.

[25] Urukiko rurasanga mu gihe Karigirwa Félicité adashobora kwiburanira kandi akaba atagaragaza impamvu yitabye nta avoka, bisobanuye ko nta nyungu afite mu rubanza, bityo hashingiwe ku biteganywa n'ingingo ya 54, igika cya mbere, y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ikirego cye cyigarika Me ZITONI Pierre Claver kikaba gisibwe mu bitabo by'Urukiko.

III. ICYEMEZO CY'URUKIKO

[26] Rwemeje ko ikirego cy'ubwigarike bwa Me Zitoni Pierre Claver cyatanzwe na Karigirwa Félicite gisibwe mu bitabo by'Urukiko rw'Ubujurire;

[27] Rwemeje ko hakurikiraho isomwa ry'urubanza n° RCOMAA 00014/2019/CA.