MIRUHO v MIHIGO N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC 00011/2019/CA (Mukandamage, P.J, Ngagi na Kamere, J.) 24 Ukuboza 2020]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Umuhesha w'Inkiko – Kurangiza urubanza – Umuhesha w'Inkiko ntiyemerewe kurangiza urubanza yabayemo umuburanyi – Itegeko nº 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko ingingo, ingingo *ya 63.*

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Gisenyi, aho Miruho yatanze ikirego arusaba gutesha agaciro inyandikomvugo y'ubahiriza amarangizarubanza yakozwe n'umuhesha w'Inkiko w'umwuga Me Sebahire, maze Mihigo agahabwa imirima 9 yavuzwe muri ayo marangizarubanza yakozwe muri 1992, akomotse kumanza zabaye muri 1991 ariko igihe zirangizwa Mihigo akaba atarahise ahabwa imirima, aribyo byatumye hakorwa inyandikomvugo muri 2015 yo kubahiriza ayo marangizarubanza yakozwe muri 1992. Urukiko rwemeje ko ikirego cya Miruho ntashingiro gifite kuko ibyakozwe by'ubahirije amategeko kuko by'ubahirizaga ibyakozwe muri 1992 Mihigo ntiyatunga imirima yari yaratsindiye.

Miruho ntiyishimiye imikirize y'urubanza, maze yandikira urwego rw'Umuvunyi asaba ko urubanza rusubirishwamo kumpamvu z'akarengane, Umuvunyi yandikira Perezida w'Urukiko rw'Ikirenga nawe asaba ko urubanza rusubirwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ikirenga yemeza ko rusubirwamo, arwohereza mu Rukiko rw'ubujurire ngo ruruburanishe.

Miruho avuga ko akarengane kagaragarira ku kuba Urukiko rwarahaye agaciro inyandikomvugo yiswe iyo k'ubahiriza amarangizarubanza yakozwe, igaha imirima icyenda Mihigo kandi izo manza bavuga zarangijwe bakaba batazize ahubwo icyo bazi ari igabana ry'umutungo hamwe n'umuryango byabaye muri 1997, ko ayo marangizarubanza atayazi kandi atanamureba. Akomeza avuga ko Mihigo yahawe imirima 9 kuko mugihe cy'igabana habanje kuvanwaho imirema 9 ye, bakabona kugabana ahubwo ko yaje kuyigurisha nyuma aribwo yazanye umuhesha w'Inkiko arangiza urubanza bwa kabiri amuha mu mirima y'umuryango, ikindi kigaragaza ko iyo nyandikomvugo igomba kuvanwaho ni uko Me Sebahire nk'umuhesha w'Inkiko yaje kurangiza izo manza kandi yarazibayemo umuburanyi.

Mihigo, avuga ko inyandikomvugo yubahiriza amarangizarubanza yo muri 1992 idakwiye kuvanwaho kuko yubahirije amategeko kuko ntabyo yakuyeho mubyari byamejwe mu rubanza, ko imirima Mihigo yatsindiye muri izo manza yayihawe, ko iyo nyandiko yakozwe ari uko hongeye kubaho imanza mu bunzi bashaka kugabana, bituma azana umuhesha w'inkiko kugira ngo atandukanye ibyo baburanaga n'ibyari bikubiye muri izo manza zombi, ko rero igabana ryabaye mu mwaka wa 1997 ataryemera; yongeraho ko imirima 9 Mihigo yahawe n'Umuhesha w'Inkiko w'Umwuga Sebahire, yari yarayitsindiye mu manza, nyuma aza guhura n'ibibazo arafungwa, afunguwe mu mwaka wa 2004, aregera iyo mirima 9 aratsinda, aba ari bwo muri 2015 yifashishije Umuhesha w'Inkiko w'Umwuga Sebahire kugira ngo ayimuheshe, bityo ko ibyo Umuhesha w'Inkiko yakoze nta kosa ririmo.

Ku ruhande rwa Me Sebahire , Umuhesha w'Inkiko w'Umwuga, avuga ko urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane nta karengane kabayemo, kuko nta rubanza yarangije inshuro ebyiri, ahubwo ko inyandiko yakoze yubahiriza amarangizarubanza kuko itegeko riteganya ko Umuhesha w'Inkiko yemerewe gukora inyandikomvugo (Procès- verbal de constat) y'ibyo asanze kuri terrain akabihuza n'inyandikompesha, ko kuba rero yararenganuye Mihigo

akora iyo nyandiko nta kosa yakoze, ko kandi kuba Urukiko rw'Ibanze rwa Gisenyi rwarayishingiyeho narwo nta makosa rwakoze.

Incamake y'icyemezo: 1. Umuhesha w'Inkiko ntiyemerewe kurangiza urubanza yabayemo umuburanyi, iyo bibaye bityo, inyandikomvugo y'irangizarubanza yyakoze itehwa agaciro ubujurire nta shingiro bufite, bityo inyandikomvugo y'irangizarubanza ryakozwe na Me Seabahire rikaba rigomba guteshwa agaciro. Imirima Mihigo yaheshejwe naryo akayisubiza.

Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro,
Imikirize y'urubanza rwasubirishijwemo ku mpamvu z'akarengane irahindutse.

Amategeko yashyimgiweho:
Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55
Itegeko Nº 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko, ingingo ya 63

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku kirego Miruho Jean de Dieu yatanze mu Rukiko rw'Ibanze rwa Gisenyi, arusaba gutesha agaciro "inyandikomvugo yubahiriza amarangizarubanza" yo ku wa 11/02/2015, yakozwe n'Umuhesha w'Inkiko w'Umwuga Me Sebahire Roger David, maze Mihigo Elias agahabwa imirima icyenda (9), ivugwa mu marangizarubanza yakozwe ku wa 02/08/1991 n'ayo ku wa 03/03/1992 yakozwe na Komisiyo yoherejwe na Komini Nyamyumba igizwe n'abayobozi bari babifitiye ububasha icyo gihe, ayo marangizarubanza akaba yari ashingiye ku rubanza nº RC 71/90/ny.my rwo ku wa 20/04/1991 n'urubanza RC 324/90/ny.my rwaciwe ku wa 28/12/1990 zabaye itegeko.

[2] Mu rubanza RC 0074/15/TB/GIS rwaciwe n'Urukiko rw'Ibanze rwa Gisenyi ku wa 08/05/2015, urwo Rukiko rwemeje ko ikirego cyatanzwe na MIRUHO Jean de Dieu nta shingiro gifite, kubera ko urubanza RC 324/90 rwaciwe n'Urukiko rwa Kanto ya Nyamyumba ku wa 28/12/1990, rwarangijwe ku wa 02/08/1991 n'urubanza RC 71/90 narwo rwaciwe n'Urukiko rwa Kanto ya Nyamyumba ku wa 20/04/1991 rukarangizwa ku wa 03/03/1992, ariko Mihigo Elias ntatunge imirima yatsindiye ku buryo yongeye kuyiheshwa ku wa 11/02/2015.

[3] MIRUHO Jean de Dieu ntiyishimiye icyo cyemezo, maze ku wa 30/06/2015 yandikira Urwego rw'Umuvunyi asaba ko urubanza RC 0074/15/TB/GIS rwasubirwamo ku mpamvu z'akarengane, Urwego rw'Umuvunyi narwo rwandikira Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, maze ku wa 28/06/2019, Perezida w'Urukiko rw'Ikirenga mu cyemezo 143/CJ/2019 ategeka ko rwoherezwa mu Rukiko rw'Ubujurire kugira ngo ruruburanishe, ruhabwa RS/INJUST/RC 00011/2019/CA.

[4] Urubanza rwaburanishirijwe mu ruhame ku wa 19/10/2020, Miruho Jean de Dieu yunganiwe na Me Tugirimana Vincent, Mihigo Elias yunganiwe na Me Dusengeyezu Pascal, uyu anahagarariye Me Sebahire Roger David.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

a. Kumenya niba inyandikomvugo yubahiriza amarangizarubanza yo ku wa 11/02/2015 ikwiye guteshwa agaciro, hakemezwa ko igabana ry'umutungo w'umuryango wa Mihanyahanyo ryakozwe ku wa 15/04/1997 ari ryo rikomeza guhabwa agaciro

[5] Miruho Jean de Dieu na Me Tugirimana Vincent umwunganira, bavuga ko yaburanye na Shankoko n'umuhungu we Mihigo Elias imanza RC 83/98NYAMY, nº RC 853/12/TB/GIS, nº RCA 0233/13/TGI/RBV, 0308/14/TB/GIS, RP 0006/13/TGI/RBV, RPA 0177/13/HC/MUS, na nº RC 0106/12/TB/GIS, zose ashaka gukuraho igabana ryo ku wa 15/04/1997 ryahesheje abagize umuryango imirima yose ya Mihanyahanyo na Mihigo Elias arimo, kubera ko yari ahagarariwe na se Shankoko kuko icyo gihe yari akiriho, Shankoko amaze gupfa ibyo yari yaragabanye bisigaranwa na Mihigo Elias, nyuma Mihigo Elias ashaka kwigarurira imirima yose y'umuryango, maze ashaka Umuhesha w'Inkiko w'Umwuga Me Sebahire Roger David akora icyo yise "Inyandikomvugo yubahiriza amarangizarubanza", maze yishyiriraho amashusho n'ibipimo by'imirima bidafite aho bikomoka, bakaba basanga rero ayo marangizarubanza avugwa Miruho Jean de Dieu atayazi kandi atanamureba, kuko we n'abandi bo mu muryango we, ikibareba ari igabana ry'umutungo ryakozwe ku wa 15/04/1997.

[6] Bakomeza bavuga ko ibyo Mihigo Elias yahawe n'amarangizarubanza y'imanza RC 071/99 na RC 324/90 yabigurishije, akaba ashaka kototera ibyo umuryango wagabanye nyuma y'imyaka 5 abihawe, cyane cyane ko iryo gabana yariregeye agatsindwa, ko aho yahawe yahagurishije mu buryo bukurikira :

- aho yaguze na Bagejo yahagurishije Hagenimana ku wa 12/05/2009 ;
- aho yaguze na Hamisi na Rutakamizi yahatsindiwe n'abana be b'abakobwa bo k'umugore mutoya ;
- aho yaguze na Mihanyahanyo na Nsekanabanga yahagurishije Hitimana Jean Damascène ku wa 08/12/2006;
- aho yaguze na Ndarwubatse, Abunzi bamutegetse kuhaha umuhungu we ikibanza yamureze;
- aho yaguze na Sebisusa yahagurishije uwitwa Nzabarantuma François (uyu yimanye amasezerano yagiranye na Mihigo Elias) ;
- umurima yaguze na Rwahoze yawutsindiye mu rubanza RC 0200/06/TV/GIS; RC 0202/05/05/TD/NYMBA na Nyiramakwene ahasigaye arahafite ;

[7] Basanga rero, kuba Mihigo Elias yarahawe imirima, ahubwo akajya gufata iby'umuryango wagabanye, kuba Umuhesha w'Inkiko w'Umwuga yararangije urubanza inshuro ebyiri, nk'uko abyivugira mu nyandiko ye, no kuba igabana ry'imirima hagati y'abagize umuryango ryo ku wa 15/04/1997 ritarigeze rivanwaho, ari impamvu zituma inyandiko ya kabiri y'irangizarubanza igomba kuvanwaho, maze ibintu bigasubizwa uko byahoze, n'irangizarubanza RC 0074/15/15/TD/GIS ryamurenganyije rigateshwa agaciro, kuko ryashingiye ku karengane yagiriwe, cyane cyane ko n'Umuhesha w'Inkiko w'Umwuga Me Sebahire Roger David yarangije urwo rubanza kandi yararubayemo umuburanyi, nyamara itegeko ribimubuza.

[8] Me Tugirimana Vincent, wunganira Miruho Jean Dieu, asobanura ko ikibazo nyamukuru ari uko habaye igabana ry'umutungo wa Mihanyahanyo, se wa Mihigo Elias, ari we Shankoko,

arariregera mu Rukiko rwa Kanto ya Nyamyumba mu rubanza RC 83/98, arega umuryango wa Mihanyahanyo ugizwe na Sibomana, Nyandwi, Birego, Bitegetsimana, Sinzahera, Nsabimana, na Butsitsi, Shankoko aratsindwa, Urukiko rwemeza ko haterwa kashempuruza, ko Shankoko yaburanaga ahagarariye abagize umuryango we na Mihigo Elias arimo, Miruho Jean de Dieu akaba rero avuga ko Mihigo Elias adafite ububasha bwo kuregera ibyo se Shankoko yaburanye agatsindwa, ko yagombye kuba yaragobotse mu rubanza cyangwa akarutambamira, bityo akaba asanga inyandiko yo ku wa 11/02/2015 yakozwe n'Umuhesha w'Inkiko Sebahire Roger David, yubahiriza amarangizarubanza y'imanza RC 324/90 na RC 71/90 itaragomba guhabwa agaciro.

[9] Me Tugirimana Vincent akomeza asobanura ko muri iryo gabana ryabaye mwaka wa 1997, mu mirima yagabanywe habanje gukurwamo imirima 9 ya Mihigo Elias ku giti cye, ko ariko Umuhesha w'Inkiko w'Umwuga Sebahire Roger David yagarutse agafata indi mirima y'umuryango 9 akayiha Mihigo Elias, kandi mu igabana rya mbere se Shankoko yari amuhagarariye, ko rero Mihigo Elias atagombye kugaruka mu igabana. Avuga kandi ko mu mirima 9 Umuhesha w'Inkiko w'Umwuga Sebahire Roger David yahaye Mihigo Elias harimo iya Miruho Jean de Dieu, iyo kwa Nsekanabanga, iyo kwa Singirankabo, iyo kwa Bitegetsimana, iyo kwa Nyiramakwene kandi yaramutsinze mu rubanza RC 20200/06/TV/GIS na RC 0202/05/NYMBA, n'iyo kwa Nsabimana, n'ubwo bo batareze.

[10] Me Dusengeyezu Pascal, wunganira Mihigo Elias, avuga ko inyandiko yo ku wa 11/02/2015 yubahiriza amarangizarubanza ikwiye guhabwa agaciro, kubera ko ntacyo yakuyeho mu byari byaremejwe mu rubanza RC 71/90 no mu rubanza RC 324/90, ko imirima Mihigo Elias yatsindiye muri izo manza yayihawe, ko iyo nyandiko yakozwe ari uko hongeye kubaho imanza mu bunzi bashaka kugabana, bituma azana umuhesha w'inkiko kugira ngo atandukanye ibyo baburanaga n'ibyari bikubiye muri izo manza zombi.

[11] Avuga na none ko ibivugwa ko Umuhesha w'Inkiko w'Umwuga Me Sebahire Roger David yafashe imirima yagabanywe aba ari yo arangirizaho imanza atari byo, kuko imirima yose hamwe yari 10, yose ikaba ari iye, imwe yagiye atsindira mu manza zitandukanye, iyo yaguze, ndetse ko harimo umurima umwe muri yo utunzwe na Miruho Jean de Dieu, ko rero igabana ryabaye mu mwaka wa 1997 ataryemera, kuko rishaka kumunyaga kandi ryarateshejwe agaciro mu rubanza RCA 0233/2013/TGI/RBV, aho Urukiko rwemeje ko ikirego kitakiriwe.

[12] Asanga Urukiko rukwiye kubona ko iryo gabana atigeze arisinyira kandi avuka mu muryango wa Mihanyahanyo, kandi bazi neza ko riburanwa, kandi ko nawe yagobotse muri izo manza, bakemera kugabana batamuhamagaje, bityo ko ryakorewe mu bwiru, ko ari ryo rikwiye kuvanwaho n'ubwo atari ryo baburana kugeza ubu.

[13] Me Dusengeyezu Pascal, yongeraho ko imirima 9 Mihigo Elias yahawe n'Umuhesha w'Inkiko w'Umwuga Sebahire Roger David, yari yarayitsindiye mu manza RC 0071/90 na nº RC 324/90, nyuma aza guhura n'ibibazo arafungwa, umuryango wa Mihanyahanyo uyisigaramo, isigara itunzwe na Miruho Jean de Dieu, Nyiramakwene, Nsabimana, Nsekanabanga, Nyirategera, Bitegetsimana na Singirankabo, afunguwe mu mwaka wa 2004, aregera iyo mirima 9 aratsinda, aba ari bwo ku itariki 11/06/2015 yifashishije Umuhesha w'Inkiko w'Umwuga Sebahire Roger David kugira ngo ayimuheshe, bityo ko ibyo Umuhesha w'Inkiko yakoze nta kosa ririmo.

[14] Ku ruhande rwa Me Sebahire Roger David, Umuhesha w'Inkiko w'Umwuga, Me Dusengeyezu Pascal avuga ko urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane nta karengane kabayemo, kuko nta rubanza yarangije inshuro ebyiri, ahubwo ko inyandiko yakoze

yubahiriza amarangizarubanza yayishingiye ku ngingo ya 5 y'itegeko rigena ibiciro fatizo by'imirimo y'abahesha b'inkiko b'umwuga, aho iteganya ko Umuhesha w'Inkiko yemerewe gukora inyandikomvugo (*Procès- verbal de constat*) y'ibyo asanze kuri terrain akabihuza n'inyandikompesha, ko kuba rero yararenganuye Mihigo Elias akora iyo nyandiko nta kosa yakoze, ko kandi kuba Urukiko rw'Ibanze rwa Gisenyi rwarayishingiyeho narwo nta makosa rwakoze.

[15] Umuhesha w'inkiko w'Umwuga Me Sebahire Roger David avuga ko ibipimo by'imirima bivugwa mu rubanza RC 71/90/Nyamy, muri rumaze ya 6, bihuye n'inyandiko yakoze, ko kandi ibipimo by'imirima 5 bivugwa ko Mihigo Elias yagurishije ntaho bihuriye n'ibivugwa mu rubanza rumaze kuvugwa. Avuga kandi ko atanyuranyije n'amategeko, ko atigeze arangiza urubanza kabiri, ndetse ko urubanza RC 0200/06/TB/GI urega ashingiraho rwavanyweho n'urubanza RCA 0233/013/TGI/RBV, rwaje gukosorwa n'urubanza RCA 0022/14/TGI/RBV, ko kandi urubanza RC 0853/12/TB/GI rwavanweho n'urubanza RCA 0233/013/TGI/RBV, aho muri rwemeje ya kabiri (2) Urukiko rwemeje ko imikirize y'urubanza RC 0853/12/TB/GI ruvanyweho.

[16] Avuga na none ko inyandikomvugo y'irangizarubanza yo ku wa 11/02/2015, uwitwa Ntakaziraho yayiregeye mu Rukiko rw'Ibanze rwa Gisenyi mu rubanza RC 0249/15/TB/GIS asaba ko iseswa, hanyuma Urukiko rukemeza ko igumana agaciro kayo, ko ariko ihinduka ku bijyanye n'umurima wa Ntakaziraho ukwiye kuvanwamo, ko rero iyo nyandiko itateshwa agaciro mu gihe hari urubanza rwayemeje, kandi rukaba atari rwo rusabirwa gusubirishwamo, ko kandi urubanza rwerekeye Shankoko rutarebaga Mihigo Elias, ibyo akaba abishingira ku rubanza RC 71/90 no ku rubanza RC 324/90, ndetse no ku rupapuro rwa mbere rw'inyandiko y'igabana yo ku wa 08/04/1994 y'umuryango wa Mihanyahanyo, aho Muvugwa Jean de Dieu ari we wagabiye abagize umuryango umutungo wa Mihanyahanyo.

[17] Asoza asaba Urukiko rw'Ubujurire kwemeza ko inyandikomvugo yubahiriza ibikubiye mu marangizarubanza igumana agaciro kayo, kubera ko yashingiye ku nyandikompesha no ku marangizarubanza RC 71/90/NY na RC 324/90/NY agifite agaciro kugeza ubu, ko ku by'ibyigabana, Urukiko mu bushishozi bwarwo rukwiye kubona ko Birego waburanaga na Shankoko igabana ry'umutungo wa Mihanyahanyo yaje kuritsindira, maze rugasesengura niba ibikubiye mu rubanza RC 71/90/NY bijyanye n'icyo Urukiko rwavuze ku igabana, ari nabyo bikubiye muri iyo nyandiko bavuga y'igabana, rukanareba niba hari aho bihurira n'ibyo Mihigo Elias yaheshejwe n'Inkiko.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 55 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ibikurikira: "Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera imwe mu mpamvu zikurikira: (…) 2º iyo mu icibwa ryarwo hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese (…).

[19] Inyandiko ziri muri dosiye zigaragaza ko ku wa 28/12/1990, Urukiko rwa Kanto ya Nyamyumba rwaciye urubanza RC 324/90, aho Shankoko, mwene Mihanyahanyo, yaregaga umuhungu we Mihigo Elias imirima itanu (5) yamubikije, Urukiko rwemeza ko iyo mirima ari iya Mihigo Elias irimo iyo yiguriye n'iyo yahawe na se Shankoko, ko ibyo se avuga ko yayimubikije atari byo kubera ko nta muntu wabitsa undi ikintu mu gihe cy'imyaka 9. Urwo rubanza rwararangijwe, ariko Shankoko ntiyishimira irangizwa ryarwo, abiregera mu Rukiko rwa

Mbere rw'Iremezo rwa Gisenyi mu rubanza RC 2668/91, maze urwo Rukiko rwemeza ko urubanza aregera rwarangijwe uko rwaciwe, ko Mihigo Elias atsindiwe bimwe, kuko hari metero z'imirima y'umuryango yagiye yibira mu yo yaguze. Mihigo Elias yajuririye icyo cyemezo mu Rukiko rw'Ubujurire rwa Ruhengeri, ariko icyo kirego kiza gusibwa, kuko atitabye Urukiko.

[20] Bigaragara na none ko ku wa 20/04/1991, Urukiko rwa Kanto ya Nyamyumba rwaciye urubanza RC 71/90, aho umuryango wa Mihanyahanyo, uhagarariwe na Birego, mwene Mihanyahanyo na Nyirarushago, wareze Shankoko, uvuga ko yanze ko bagabana ibikomoka kuri se Mihanyahanyo, asaba Urukiko kumubaza impamvu, urwo Rukiko rwemeza ko Shankoko asubiza abana ba Mihanyahanyo imirima yose aregwa yikubiye bakayigabana, buri mwana agaherera ku bikorwa bye no ku kibanza cye, ko kandi iryo gabana ritajyamo imirima Mihigo Elias (nawe wabajijwe muri urwo rubanza) yiguriye n'iyo yiherewe yagaragaje. Ku wa 15/04/1997, nibwo Konseye wa Segiteri Kiraga Biryukomeye Fabien yagabanyije abana ba Mihanyahanyo isambu.

[21] Nyuma y'ibyo Mihigo Elias yareze Miruho Jean de Dieu, Nsabimana, Nyiramakwene na Nyiraburiri mu Rukiko rw'Ibanze rwa Gisenyi asaba Urukiko gutesha agaciro igabana ry'umuryango wa Mihanyahanyo ryo ku wa 15/04/1997 kubera ko ryatwaye imirima yiguriye, maze ikirego cye cyandikwa kuri RC 0106/12/TB/GIS, urubanza rucibwa ku wa 27/07/2012, Urukiko rwemeza ko igabana ryabaye se wa Mihigo Elias akiriho kandi ahibereye ari na we mwana wa Mihanyahanyo, ko se Shankoko yaregeye iryo gabana mu rubanza RC rwo ku wa 13/07/1998 agatsindwa, hanyuma urwo rubanza rugaterwaho kashempuruza, bityo ko ikirego kitakiriwe, kuko nta nyungu Mihigo Elias afite zo kuregera iryo gabana.

[22] Mihigo Elias yareze na none Miruho Jean de Dieu, Nsabimana, Nyiramakwene na Nyirategera Bifa mu Rukiko rw'Ibanze rwa Gisenyi, asaba na none gutesha agaciro iryo gabana ryo ku wa 15/04/1997, kuko ryafashe ku mirima ye yaburanye mu rubanza nº RC 71/90 afitiye irangizarubanza ryakozwe ku wa 03/03/1992, ko kandi iyo mirima yayigaragaje mu rubanza RC 324/90, Urukiko rugategeka ko itagomba kugabanywa. Urukiko rwaciye urubanza nº RC 0853/012/TB/GIS ku wa 28/03/2013, rusanga mu rubanza RC 0200/06/TV/GIS na RCA 0148/08/HC/MUS Mihigo Elias yaratsindiwe umurima arega Nyiramakwene, ko umurima Mihigo Elias arega Nsabimana nawe yemera ko bawuburanye mu Bunzi b'Umurenge wa Nyamyumba agatsindwa ku wa 27/04/2011, akarekera, ko kuri Miruho Jean de Dieu, umurima amurega nta kimenyetso atanga cy'uko yawuguze na Nsekanabanga, naho kuri Nyirategera, Urukiko rwasanze awukomora ku igabana kandi rifite agaciro, Mihigo Elias akaba atagomba kuwugundira, maze rwemeza ko ikirego cya Mihigo Elias nta shingiro gifite.

[23] Mihigo Elias ntiyishimiye imikirize y'urwo rubanza, ayijuririra mu Rukiko Rwisumbuye rwa Rubavu, ubujurire bwe bwandikwa kuri RCA 0233/013/TGI/RUBAVU, ku wa 20/09/2013 urwo Rukiko rwemeza ko icyo kirego kidashobora kongera kwakirwa mu nkiko ngo kiburanishwe kandi cyaramaze gufatwaho umwanzuro, rwemeza kandi ko imikirize y'urubanza RC 0853/012/TB/GIS ivanyweho.

[24] Ku wa 03/06/2014 Umuhesha w'Inkiko w'Umwuga Kalisa R. Didier yarangije urubanza RCA 0233/013/TGI/RUBAVU, mu nyandiko y'irangizarubanza avuga ko igabana ryo ku wa 15/04/1997 rigumanye agaciro nk'uko byemejwe mu manza zitandukanye. Ibyo byatumye Mihigo Elias amurega mu Rukiko rw'Ibanze rwa Gisenyi mu rubanza RC 0308/14/TB/GIS, avuga ko iryo rangizarubanza ryakozwe nabi, ku wa 12/12/2014, urwo Rukiko rwemeza ko icyo kirego nta shingiro gifite, ko inyandikomvugo yubahiriza igabana ryo ku wa 15/04/1997 yakozwe n'Umuhesha w'Inkiko w'Umwuga Kalisa R. Didier ku wa 03/06/2014 igumanye agaciro kayo.

[25] Urukiko rurasanga mu rubanza RC 71/90, Shankoko, se wa Mihigo Elias yaburanye n'abandi bagize umuryango wa Muhanyahanyo, Mihigo Elias nawe yari arurimo agaragaza umutungo we utagomba kugabanywa, Urukiko rwa Kanto ya Nyamyumba rwemeza ko imitungo ya Muhanyahanyo igabanywa abana be, ariko hatarimo imirima ya Mihigo Elias yagaragaje muri urwo rubanza, urwo rubanza rurangizwa n'igabanywa ryakozwe na Konseye wa Segiteri Kiraga, ishimangirwa n'inyandikomvugo yakozwe n'Umuhesha w'inkiko w'Umwuga Kalisa R. Didier ku wa 03/06/2014, kandi imanza Migiho Elias yashoje agamije kuvanaho iryo gabana ntizakiriwe n'inkiko yaregeye, bikaba rero byumvikana ko igabana ryo ku wa 15/04/1997 rigifite agaciro.

[26] Urukiko rurasanga mu nyandikomvugo yubahiriza amarangizarubanza yakozwe ku wa 11/02/2015 na Me Sebahire Roger David, Umuhesha w'inkiko w'Umwuga avuga ko ashingiye ku marangizarubanza yo ku wa 02/08/1991 no ku wa 03/03/1992 yakozwe na Komisiyo yoherejwe na Komini Nyamyumba igizwe n'abayobozi bari babifitiye ububasha icyo gihe, no ku manza nº 71/90/ny/my rwo ku wa 20/04/1991 n'urubanza RC 324/90/ny/my rwaciwe ku wa 28/12/1990, ko ayo marangizarubanza atigeze aregerwa ngo ateshwe agaciro akaba yarabaye itegeko, ko asanga Miruho Jean de Dieu n'abo bafatanyije baritwaje igabana ryakozwe n'umuryango wa Mihanyahanyo bafata amwe mu masambu ya Mihigo Elias kandi inteko y'abaturage irabishimangira, ko rero amusubije imirima ye 9.

[27] Urukiko rurasanga Umuhesha w'inkiko Me Sebahire Roger David yararengereye, yongera kurangiza imanza zari zararangijwe, n'Urukiko rw'Ibanze rwa Gisenyi rurabishimangira mu rubanza RC 0074/15/TB/Gis rusabirwa gusubirwamo ku mpamvu z'akarengane, aho narwo rwasanze ko urubanza nomero 324/90 rwaciwe n'Urukiko rwa Kanto ya Nyamyumba ku wa 28/12/1990 rwararangijwe ku wa 02/08/1991, n'urubanza RC 71/90 rwarangijwe ku wa 03/03/1992, ariko Mihigo ntatunge imirima yatsindiye ku buryo yongeye kuyihesha ku wa 11/02/2015 n'Umuhesha w'inkiko w'Umwuga Me Sebahire Roger David, ruvuga ko nta kosa yakoze, kuko yubahirije ibyakozwe na bagenzi be, nyamara rwirengagije igabana ryakozwe ku wa 15/04/1997 na none harangizwa izo manza, hamwe n'imanza zavuzwe haruguru zakurikiye iryo gabana Mihigo Elias yashoje ashaka ko rivanwaho, ariko akagenda atsindwa.

[28] Urukiko rurasanga rero urubanza RC 0074/15/TB/Gis rwaciwe ku wa 08/05/2015 n'Urukiko rw'Ibanze rwa Gisenyi rugomba guhinduka, kuko ikirego Miruho Jean de Dieu yatanze agamije gutesha agaciro inyandikomvugo yubahiriza amarangizarubanza yo ku wa 11/02/2015 yakozwe n'Umuhesha w'inkiko w'Umwuga Me Sebahire Roger David cyari gifite ishingiro, kuko yarangije imanza zari zaramaze kurangizwa, maze kahagumaho igabana ry'umutungo wa Mihanyahanyo hagati y'abagize umuryango we nk'uko ryakozwe ku wa 15/04/1997.

[29] Urukiko rurasanga rero inyandikomvugo y'irangizwa ry'urwo rubanza RC 0074/15/TB/Gis, Umuhesha w'inkiko w'Umwuga Me Sebahire Roger David yakoze ku wa 11/06/2015 nta gaciro ifite, kuko urwo rubanza ruhindutse, kandi ntiyari yemerewe kurangiza urubanza nawe yarezwemo nk'uko biteganywa n'ingingo ya 63 y'Itegeko Nº 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko[1].

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[1] Iyo ngingo iteganya ibikurikira: "Umuhesha w'inkiko agomba gukorera buri muntu wese umwitabaje. Ariko ntashobora kwikorera inyandiko we ubwe cyangwa kwirangiriza urubanza, kubikorera uwo bashakanye cyangwa abo bafitanye isano mu miryango kugeza ku gisanira cya kane (4).
Umuhesha w'inkiko ntashobora kandi gukora inyandiko cyangwa ngo arangize urubanza rurimo isosiyete, ishyirahamwe cyangwa koperative afitemo imigabane cyangwa abereye umunyamuryango, cyangwa umwe mu bavugwa mu gika cya mbere cy'iyi ngingo abereye umunyamuryango, cyangwa afitemo imigabane.
Ntashobora na none kurangiza icyemezo yagizemo uruhare"

[30] Urukiko rurasanga, rushingiye ku biteganywa n'ingingo ya 55 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru no ku bimaze gusobanurwa, ikirego cyatanzwe na Miruho Jean de Dieu cyo gusubirishamo urubanza RC 0074/15/TB/Gis rwaciwe n'Urukiko rw'Ibanze rwa Gisenyi ku wa 08/05/2015 gifite ishingiro, urwo rubanza rukaba rugomba guhinduka, bityo inyandikomvugo yubahiriza amarangizarubanza yakozwe ku wa 11/02/2015 n'Umuhesha w'Inkiko w'Umwuga Me Sebahire Roger David, hamwe n'inyandikomvugo y'irangizwa ry'urubanza nº RC 0074/15/TB/Gis yakoze ku wa 11/06/2015 zivanyweho.

b. Ku byerekeye indishyi zisabwa n'ababuranyi

[31] Me tugirimana Vincent, wunganira Miruho Jean de Dieu, asaba Urukiko rw'Ubujurire gutegeka abaregwa bose gufatanya guha Miruho Jean de Dieu indishyi z'akababaro yatewe n'uru rubanza zingana na 2.000.000 Frw.

[32] Me Dusengeyezu Pascal, avuga ko Miruho Jean de Dieu adakwiye guhabwa indishyi asaba, kuko ari we nyirabayazana w'uru rubanza, ahubwo ko ari we ukwiye kuzitanga, akaba asaba Urukiko rw'Ubujurire kumutegeka guha Me Sebahire Roger David indishyi z'akababaro zingana na 1.500.000 Frw, no guha Mihigo Elias 5.000.000 Frw y'indishyi mbonezamusaruro y'igihe yamaze adatunze isambu ye, yabazwe hakurikijwe agaciro k'umusaruro yakuragamo buri mwaka, hakaba hashize imyaka irenga ku icumi atayikoresha.

UKO URUKIKO RUBIBONA

[33] Urukiko rurasanga indishyi z'akababaro Me Sebahire Roger David asaba n'indishyi mbonezamusaruro Mihigo Elias asaba batazigenerwa, kuko ntacyo batsindiye muri uru rubanza.

[34] Urukiko rurasanga indishyi z'akababaro Miruho Jean de Dieu asaba Mihigo Elias na Sebahire Roger David zifite ishingiro, kuko barangirije imanza zari zararangijwe kubera gusa ko batemera igabana ryabaye ku mitungo y'umuryango wa Mihanyahanyo, bigatuma ahungabana mu burenganzira afite ku mutungo we, bityo bagomba gufatanya kumwishyura izingana na 200.000 Frw agenwe mu bushishozi bwarwo, kuko 1.000.000 Frw asaba ari menshi.

c. Amafaranga y'ikurikiranarubanza n'ibihembo bya ba Avoka

[35] Me Tugirimana Vincent, wunganira Miruho Jean de Dieu, asaba Urukiko rw'Ubujurire gutegeka abaregwa bose gufatanya gusubiza Miruho Jean de Dieu 1.000.000 Frw y'igihembo cya Avoka.

[36] Me Dusengeyezu Pascal, avuga ko Miruho Jean de Dieu adakwiye guhabwa 1.000.000 Frw y'igihembo cya Avoka asaba, ko ahubwo ari we ukwiye kwishyura Sebahire Roger David 100.000 Frw y'ingendo ava Rubavu-Kigali, amafunguro n'icumbi, 400.000 Frw y'ikurikirana rubanza, no guha Mihigo Elias 1.000.000 Frw y'igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[37] Ingingo ya 111 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: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza

kiburanishirizwa rimwe n’ikirego cy’iremezo. Gishobora kandi kwakirwa kikanaburanishwa n’iyo ikirego cy’iremezo cyaba kitakiriwe”.

[38] Urukiko rurasanga amafaranga y’igihembo cya Avoka Miruho Jean de Dieu asaba abaregwa afite ishingiro, kuko yashatse Avoka umwunganira agomba guhemba, ariko 1.000.000 asaba ni menshi, mu bushishozi bwarwo, akaba genewe 700.000 Frw kuri uru rwego bagomba gufatanya kumwishyura.

[39] Urukiko rurasanga amafaranga y’ikurikiranarubanza n’igihembo cya Avoka asabwa na Mihigo Elias na Sebahire Roger David batayagenerwa kuko ibyo baregwa na Miruho Jean de Dieu muri uru rubanza bifite ishingiro.

III. ICYEMEZO CY’URUKIKO

[40] Rwemeje ko ikirego cyatanzwe na MIRUHO Jean de Dieu cyo gusubirishamo urubanza RC 0074/15/TB/Gis rwaciwe n’Urukiko rw’Ibanze rwa Gisenyi ku wa 08/05/2015 gifite ishingiro ;

[41] Rwemeje ko urubanza RC 0074/15/TB/Gis rwaciwe n’Urukiko rw’Ibanze rwa Gisenyi ku wa 08/05/2015 ruhindutse mu ngingo zarwo zose ;

[42] Rwemeje ko inyandikomvugo yubahiriza amarangizarubanza yakozwe ku wa 11/02/2015 n’Umuhesha w’Inkiko w’Umwuga Me Sebahire Roger David, hamwe n’inyandikomvugo y’irangizwa ry’urubanza RC 0074/15/TB/Gis yakoze ku wa 11/06/2015 zivanyweho ;

[43] Rutegetse Mihigo Elias na Me Sebahire Roger David gufatanya kwishyura Miruho Jean de Dieu 700.000 Frw y’igihembo cya Avoka na 200.000 Frw y’indishyi z’akababaro, yose hamwe akaba 900.000 Frw ;

[44] Ruvuze ko amagarama y’urubanza aherera ku Isanduku ya Leta.