KAMANZI v UMUJYI WA KIGALI N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RADAA 00006/2020/CA– (Ngagi, P.J., Umugwaneza na Kamere, J.) 28 Gashyantare 2022]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Amasezerano y'ubwumvikane – Agaciro k'amasezerano y'ubwumikane – Amasezerano y'ubwumvikane abaye hagati y'ababuranyi bose akemura ikibazo bari bafitanye, agasoza urubanza kandi ubwo bwumvikane bukaba bugomba kubahirizwa n'impande zose zabugiranye

Incamake y'ikibazo: Kamanzi yareze Akarere ka Kicukiro asaba ko kamusubiza ikibanza cye cyahawe abandi bantu kuko yishyuye amafaranga yasabwaga n'Umujyi wa Kigali mu rwego rwo gushyiraho ibikorwa remezo bitandukanye ndetse akaba yarasinye amasezerano y'ubukode burambye n'Umujyi wa Kigali, ahabwa *fiche cadastrale*, akomeza kwishyura imisoro nyuma y'uko hatangiye gutangwa ibyangombwa bishya. Muri uru rubanza hagobokeshejwemo abagiye bahererekanya ubwo butaka mu buryo bw'igurisha.

Urukiko rwemeje ko ikirego cye gifite ishingiro kuri bimwe, rutegeka Akarere kumusubiza ikibanza cye no kumuha indishyi zitandukanye zibyatanzwe muri uru rubanza. Urega ntiyishimiye iki cyemezo, akijuririra mu Rukiko Rukuru avuga ko ibyangombwa byahawe bamwe mu bagobokeshejwe byagombaga guteshwa agaciro kandi ko yagombaga guhabwa indishyi z'akababaro. Urukiko Rukuru rwemeje ko ubujurire bwe nta shingiro bufite, ko ubujurire bwuririye ku bundi bw'Abaregwa bufite ishingiro, ko imikirize y'urubanza rwajuririwe ihindutse kuri byose. Rwemeje ko umutungo uburanwa wavuyemo ibibanza bibiri bitunzwe n'abandi mu buryo bukurikije amategeko.

Urega yajuririye Urukiko rw'Ubujurire maze ku munsi w'iburanisha Urukiko rubashishikariza gukemura ikibazo mu bwumvikane, narwo rukabibafashamo nk'umuhuza. Ababuranyi bamenyesheje Urukiko ko bageze kubwumvikane, banarugaragariza ibikubiye mu masezerano n'izindi nyandiko z'ubwumvikane, basaba Urukiko ko ayo masezerano yasoza urubanza rwari hagati yabo.

Incamake y'icyemezo: Amasezerano y'ubwumvikane abaye hagati y'ababuranyi bose akemura ikibazo bari bafitanye, agasoza urubanza kandi ubwo bwumvikane bukaba bugomba kubahirizwa n'impande zose zabugiranye. Bityo, amasezerano y'ubwumvikane yo ku wa 24/01/2022 n'izindi nyandiko zakozwe byakemuye ikibazo ababuranyi bari bafitanye bikaba bisoje urubanza rwari mu Rukiko rw'Ubujurire.

Urubanza rwari mu Rukiko rw'Ubujurire rusojwe n'amasezerano y'ubwumvikane.
Amagarama ahwanye n'ibyakozwe.

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 9.

Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Kamanzi Francis arega Akarere ka Kicukiro, avuga ko kamuhaye ikibanza gifite nimero 9993 giherereye mu Kagari ka Kanserege, Umurenge wa Kagarama, Akarere ka Kicukiro. Nyuma yo guhabwa ikibanza, yishyuye amafaranga yasabwaga n’Umujyi wa Kigali mu rwego rwo gushyiraho ibikorwa remezo bitandukanye (amashanyarazi, n’imihanda n’ibindi), nyuma kandi Kamanzi Francis yasinye amasezerano y’ubukode burambye n’Umujyi wa Kigali ndetse ahabwa *fiche cadastrale* n’ubuyobozi bw’Umujyi wa Kigali, yakomeje kwishyura imisoro nyuma y’uko hatangiye gutangwa ibyangombwa bishya, Kamanzi Francis yandikiye Akarere ka Kicukiro asaba guhabwa ibyangombwa bishya ariko ntacyo kamumariye, ahubwo nyuma yaje kumenya ko cyanditse ku wundi muntu akaba ariyo mpamvu yareze Akarere ka Kicukiro asaba ko yasubizwa ikibanza cye cyahoze gifite numero 9993, ubu cyahawe 668, giherereye kuri *address* yavuzwe haruguru.

[2] Muri urwo rubanza hagobokeshejwe abitwa Dada Richard, Tebuka Yvette, Uwihoreye Béatrice, Nyiringabo Pierre, Mutayomba Sylvestre, Umugwaneza Renatha, Ingabire Thérèse, Kanuma Charles, Karangwa Norbert na Rubaduka Kamaliza, bivugwa ko bagiye baherekanya ubwo butaka mu buryo bw’igurisha.

[3] Ku wa 30/07/2020, mu rubanza RAD 00195/2016/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwemeye kwakira ikirego rwashyikirijwe na Kamanzi Francis rugisuzumye rusanga gifite ishingiro kuri bimwe; rutegeka Akarere ka Kicukiro gushyikiriza Kamanzi Francis ikibanza cye, kwishyura 1.000.000 Frw y’igihembo cya Avoka no kumusubiza 50.000 Frw yatanzeho ingwate y’amagarama.

[4] Kamanzi Francis ntiyishimiye imikirize y’urubanza, ajuririra Urukiko Rukuru, avuga ko Urukiko rwagombaga gutesha agaciro ibyangombwa byahawe Karangwa Norbert, Nyiringabo Pierre na Uwihoreye Béatrice, kandi ko yagombaga guhabwa indishyi z’akababaro.

[5] Ku wa 30/07/2020, Urukiko Rukuru rwaciye urubanza RDA 00005/2019/HC/KIG, rwemeza ko ubujurire bwa Kamanzi Francis nta shingiro bufite, ko ubujurire bwuririye ku bundi bw’Umujyi wa Kigali, ubwa Dada Richard na Tebuka Yvette, ubwa Karangwa Norbert, n’ubwa Nyiringabo Pierre na Uwihoreye Béatrice bufite ishingiro, ko imikirize y’urubanza rwajuririwe ihindutse kuri byose, ko ikirego Kamanzi Francis yari yatanze, nta shingiro gifite kubera ko ibi bibanza bitunzwe n’abandi ku buryo bukurikije amategeko nk’uko byasobanuwe, ko ibyo Umujyi wa Kigali wari wategetswe, byo gushyikiriza Kamanzi Francis ikibanza cye cyahoze gifite nomero 9993 giherereye mu Mudugudu wa Bwiza, Akagari ka Kanserege, Umurenge wa Kagarama, Akarere ka Kicukiro, Umujyi wa Kigali gifite ubuso bwa 1500 sqm (15 a) bivanyweho, kuko icyo kibanza ari cyo cyavuyemo ibibanza 667 na 668 kandi ibyo bibanza bikaba bitunzwe n’abandi bantu ku buryo bukurikije amategeko nk’uko byasobanuwe, bityo bikaba atari iby’Umujyi wa Kigali, rumutegeka kwishyura indishyi zitandukanye mu rubanza.

[6] Kamanzi Francis na none ntiyishimiye imikirize y’urubanza, arujuririra mu Rukiko rw’Ubujurire, ubujurire bwe bwandikwa kuri RADAA 00006/2020/CA.

[7] Ku wa 13/01/2021, ababuranyi bitabiriye iburanisha nk’uko byari biteganijwe, Kamanzi Francis ahagarariwe na Me Niyondora Nsengiyumva, Umujyi wa Kigali uhagarariwe na Me Safari Vianney, Karangwa Norbert ahagarariwe na Me Ngendahimana Réné, Uwihoreye Béatrice na Nyiringabo Pierre bahagarariwe na Me Nyiringabo Théoneste, Dada Richard na Tebuka Yvette bahagarariwe na Me Ndikumana Vincent. Kuri uwo munsi Urukiko rubashishikariza gukemura ikibazo mu bwumvikane, narwo rukabibafashamo nk’umuhuza. Urukiko rwasubitse urubanza mu gihe ubwumvikane bwarimo bukorwa,

nk'uko biteganywa n'ingingo ya 9, igika cya 3, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[8] Ku wa 25/02/2022 ababuranyi bitabiriye iburanisha bahagarariwe nka mbere, bamenyesha Urukiko ko bageze kubwumvikane, banarugaragariza ibikubiye mu masezerano n'izindi nyandiko z'ubwumvikane, basaba Urukiko ko ayo masezerano yasoza urubanza rwari hagati yabo.

II. ISESENGURA RY'URUBANZA

Kumenya agaciro k'amasezerano y'ubwunvikane bwabaye hagati ya Kamanzi Francis n'Umujyi wa Kigali n'izindi nyandiko z'ubwunvikane zatanzwe na Karangwa Norbert, Nyiringabo Pierre na Uwihore Beatrice, Dada Richard na Tebuka Yvette

[9] Ingingo ya 9, igika cya 3, y'Itegeko Nº 22/2018 yo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibikurikira: umucamanza ashobora gushishikariza ababuranyi gukoresha ubwunzi iyo abona ko ari bwo buryo buboneye mu kurangiza impaka. Ashobora kubunga ubwe cyangwa akabohereza mu bwunzi, agasubika urubanza mu gihe ubwunzi burimo gukorwa.

[10] Ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ibikurikira: amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. (…).

[11] Nk'uko byibukijwe haruguru, mu iburanisha ryo ku wa 25/02/2022, Kamanzi Francis n'Umujyi wa Kigali bashyikirije Urukiko amasezerano y'ubwumvikane yabaye hagati yabo ku wa 24/01/2022, Urukiko rwashyikirijwe na none inyandiko zitandukanye z'abandi baburanyi muri uru rubanza zigaragaza ko bashyigikiye ubwumvikane bakaba baremeye kurangiza ikibazo bari bafitanye muri iyo nzira. Muri izo nyandiko harimo amasezerano y'ubwimvikane yo ku wa 24/01/2022 hagati ya Kamanzi Francis n'Umujyi wa Kigali, iya Karangwa Norbert yo ku wa 10/02/2022, iya Dada Richard na Tebuka Yvette yo ku wa 09/02/2022, iya Nyiringabo Pierre n'umugore we Uwihoreye Béatrice yo ku wa 14/02/2022.

[12] Mu iburanisha ryo ku wa 25/02/2022, ababuranyi bose bemeranyije; ko amasezerano y'ubwumvikane yabaye hagati ya Kamanzi Francis n'Umujyi wa Kigali yubahirizwa uko ari, ko Karangwa Norbert aretse indishyi zose yasabaga Umujyi wa Kigali, ko Umujyi wa Kigali wemera kumwongerera (*renewal*) igihe cy'uruhushya rwe rwo kubaka (*Construction Permit/Autorisation de bâtir*) nta kindi kiguzi cyarwo agombye gutanga (*free of charge*) kandi ko ibyemezo byose byafatiwe ikibanza cye (ibaruwa imuhagarika kubaka yandikiwe n'Akarere ka Kicukiro ku wa 19/11/2019 n'itambamira (*caveat*) ry'ikibanza cye kibaruye kuri UPI:1/03/04/01/667 Kamanzi Francis yandikishije mu Kigo cy'Ubutaka biteshwa agaciro, ko Dada Richard na Tebuka Yvette baretse indishyi basabaga zikomoka mu manza zabanje ndetse nizo muri uru rubanza, ko Nyiringabo Pierre n'umugore we Uwihoreye Béatrice nabo baretse indishyi zo gushorwa mu manza n'amafaranga y'igihembo cya Avoka basabaga.

[13] Ku byerekeye amasezerano y'ubwumvikane yo ku wa 24/01/2022 n'izindi nyandiko zavuzwe haruguru, Urukiko rurasanga byarakemuye ikibazo ababuranyi bari bafitanye bikaba rero bisoje urubanza RADAA 00006/2020/CA rwari mu Rukiko rw'Ubujurire hagati y'aburanyi bose nk'uko bagaragara muri uru rubanza, kandi ubu bwumvikane bukaba bugomba kubahirizwa n'impande zose zabugiranye nk'uko biteganywa n'ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ryibukijwe haruguru.

III. ICYEMEZO CY'URUKIKO

[14] Rwemeje ko urubanza RADAA 00006/2020/CA rwari mu Rukiko rw'Ubujurire rusojwe n'amasezerano y'ubwumvikane yo ku wa 24/01/2022 n'inyandiko zitandukanye zavuzwe haruguru.

[15] Rwemeje ko ibikubiye mu masezerano n'inyandiko zitandukanye nk'uko byavuzwe mu gika cya 12 cy'uru rubanza bigomba kubahirizwa uko biri.

[16] Ruvuze ko amagarama y'urubanza yatanzwe na Kamanzi Francis ajurira ahwanye n'ibyarukozwemo.