NIYIGENA vs. MURANGWA

[Rwanda URUKIKO RW'UBUJURIRE – RADA00007/2024/CA (Mukandamage, J.P.) 16 Kamena 2024]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Kureka urubanza – Kureka urubanza ni uburenganzira umuburanyi afite bwo kuvuga ko aretse urubanza yari yaregeye, uwo yaregaga akabyemera – Kureka urubanza bishobora gukorwa no kwemerwa aho urubanza rwaba rugeze hose bikozwe mu nyandiko iriho umukono w'umuburanyi ubwe cyangwa w'umwunganira kandi bikamenyeshwa uwo baburana, bikaba byavugirwa mu nama ntegurarubanza cyangwa mu iburanisha.

Incamake y'ikibazo: Niyagaba yareze Ikigo cy'Igihugu cy'Ibarurishamibare (NISR) mu Rukko Rwisumbuye rwa Nyarugenge asaba gusubizwa mu kazi no guhabwa indishyi kuberako yirukanwe mu buryo budakurikije amategeko. Urukiko Rwisumbuye niko rwabyemeje maze icyo Kigo kijuririra icyo cyemezo mu Rukiko Rukuru ariko na rwo rwemeza ko urubanza rwajuririwe rudahindutse.

NISR yasabye ko urwo rubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane maze mu rubanza RS/INJUST/RAD 00001/2022/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 27/01/2023, rwemeza ko nta karengane kabaye muri urwo rubanza RADA 00008/2020/HC/KIG. Nyuma y'uru rubanza rw'akarengane, Urega yagiye yandikira kenshi Inzego za Leta zitandukanye asaba ko urwo rubanza rurangizwa ariko ntihagira igikorwa, bituma atanga ikirego mu Rukiko Rukuru arega Murangwa uwari Umuyobozi wa NISIR, ngo ategekwe gushyira mu bikorwa urwo rubanza rwaciwe n'Urukiko rw'Ikirenga n'izo manza zaciwe mbere ndetse ahabwe. igihano kimuhatira kwishyura kubera kudashyira mu bikorwa ibyategetswe n'inkiko.

Urukiko Rukuru rwaciye urubanza rwemeza ko ikirego cy'Urega kitakiriwe kuko ingingo ya 184 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yashingiyeho agitanga yavanweho n'ingingo ya 1 y'Itegeko N° 007/2023 ryo ku wa 22/01/2024 rihindura iryo tegeko.

Urega yajuririye icyo cyemezo mu Rukiko rw'Ubujurire mu rubanza RADA00007/2024/CA, avuga ko Urukiko Rukuru rwagombaga kwakira ikirego cye kuko iyo ngingo yavanyweho nyuma y'uko atanze ikirego cye. Mu gihe cy'iburanisha, Urega yavuze ko aretse urubanza kuko uwo yari yareze amusaba gushyira mu bikorwa ibyategetswe n'inkiko atakiri Umuyobozi w'Ikigo NISR wabazwa izo nshingano.

Uregwa yireguye avuga ko kureka urubanza, ari uburenganzira bw'Urega ahabwa n'itegeko bityo, akaba yabyemererwa.

Incamake y'icyemezo: Kureka urubanza ni uburenganzira umuburanyi afite bwo kuvuga ko aretse urubanza yari yaregeye, uwo yaregaga akabyemera. Bishobora gukorwa no kwemerwa aho urubanza rwaba rugeze hose bikozwe mu nyandiko iriho umukono w'umuburanyi ubwe cyangwa w'umwunganira kandi bikamenyeshwa uwo baburana, bikaba byavugirwa mu nama ntegurarubanza cyangwa mu iburanisha.

Urega yemerewe kureka urubanza.

Amategeko yashingiweho:

Itegeko Nº 007/2023 ryo ku wa 22/01/2024 rihindura 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 1.

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 111, 123, 124 n'iya 184.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Niyigaba Jean yareze Ikigo gishinzwe ibarurishamibare mu Rwanda (NISR) avuga ko cyamwirukanye mu buryo budakurikije amategeko, asaba n'indishyi zinyuranye. Maze mu rubanza RAD00191/2019/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rusanga icyo kirego gifite ishingiro, rutegeka NISR gusubiza Niyigaba Jean mu kazi no kumuha umushahara yahembwaga ubarwa kuva umunsi yirukaniweho kugeza asubijwe mu kazi.

[2] NISR yajuririye Urukiko Rukuru, hanyuma mu rubanza RADA00008/2020/HC/KIG, rwemeza ko imikirize y'urubanza rwa mbere idahindutse, rutegeka ko Niyigaba Jean agomba gusubizwa mu kazi akanabarirwa umushahara we kugeza ku munsi azasubirizwa mu kazi, n'izindi ndishyi zinyuranye.

[3] Nyuma y'urwo rubanza NISR yiyambaje inzira yo kurusubirishamo ku mpamvu z'akarengane, hanyuma mu rubanza no RS/INJUST/RAD00001/2022/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 27/01/2023, rwemeza ko nta karengane kabaye mu rubanza RADA00008/2020/HC/KIG, rutegeka NISR guha Niyigaba Jean amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka.

[4] Niyigaba Jean yagiye yandikira inzego za Leta zitandukanye, ariko ntihagira igikorwa ngo urwo rubanza rurangizwe, hanyuma aza gutanga ikirego mu Rukiko Rukuru, asaba ko rutegeka Murangwa Yusuf, Umuyobozi Mukuru w'Ikigo cy'Igihugu gishinzwe ibarurishamibare mu Rwanda, kubahirizwa ibyategetswe mu manza zavuzwe haruguru no kumutegeka kumwishyura inyungu ku ndishyi zategetswe, kugeza umunsi azashyirira mu bikorwa icyemezo cy'urukiko, rukanagenera uwo muyobozi igihano kimuhatira kwishyura kubera kudashyira mu bikorwa ibyategetswe n'inkiko.

[5] Ku wa 10/05/2024, Urukiko Rukuru rwaciye urubanza RAD00006/2024/HC/KIG, rwemeza ko ikirego cyatanzwe na Niyigaba Jean kitakiriwe, kuko ingingo ya 184 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yashingiyeho agitanga yavanweho n'ingingo ya 1 y'Itegeko Nº 007/2023 ryo ku wa 22/01/2024 rihindura Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[6] Niyigaba Jean yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa RADA00007/2024/CA, ruburanishwa mu ruhame ku wa 13/08/2024, Niyigaba Jean ahagarariwe na Me Dusenge Vestine, naho Murangwa Yusuf ahagarariwe na Me Habumuremyi Prosper.

[7] Mu myanzuro ye, Niyigaba Jean avuga ko Urukiko Rukuru rwagombaga kwakira ikirego cye rushingiye ku mpamvu y'ko ingingo ya 184 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe

haruguru yavanyweho n'ingingo ya 1 y'Itegeko Nº 007/2023 ryo ku wa 22/01/2024 naryo ryavuzwe haruguru, nyuma y'uko atanze ikirego cye. Mu iburanisha, Me Dusenge Vestine, uburanira Niyigaba Jean yabwiye urukiko ko aretse urubanza. Uhagarariye Murangwa Yusuf yiregura avuga ko kureka urubanza ari uburenganzira bwa Niyigaba Jean, ariko ko agomba kumwishyura amafaranga y'ibyagiye ku rubanza.

[8] Ibibazo bigomba gusuzumwa ni ibi bikurikira:

- kumenya niba Niyigaba Jean yakwemererwa kureka urubanza;
- kumenya niba Murangwa Yusuf yagenerwa amafaranga y'ibyagiye ku rubanza.

II. ISESENURA RY'IBIBAZO BIGIZE URUBANZA

a. Kumenya niba Niyigaba Jean yakwemererwa kureka urubanza

[9] Mu gihe cy'iburanisha, Me Dusenge Vestine, uhagarariye Niyigaba Jean, yavuze ko Niyigaba Jean aretse urubanza, kuko Murangwa Yusuf atakiri Umuyobozi w'Ikigo cy'Igihugu gishinzwe ibarurishamibare mu Rwanda, ko yari yamureze asaba ko yubahiriza ibyemezo by'inkiko, ubu akaba atakibazwa izo nshingano nk'Umuyobozi w'icyo kigo.

[10] Me Habumuremyi Prosper, uhagarariye Murangwa Yusuf, yavuze ko Niyigaba Jean yakwemererwa kureka urubanza, kuko ari uburenganzira ahabwa n'itegeko.

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[11] Ku byerekeye kureka urubanza, ingingo ya 123, igika cya 1 kugeza ku 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 iteganya ibikurikira: kureka urubanza ni uburenganzira umuburanyi afite bwo kuvuga ko aretse urubanza yari yaregeye, uwo yaregaga akabyemera. Kureka urubanza bishobora gukorwa no kwemerwa aho urubanza rwaba rugeze hose bikozwe mu nyandiko iriho umukono w'umuburanyi ubwe cyangwa w'umwunganira kandi bikamenyeshwa uwo baburana. Bishobora kandi kuvugirwa mu nama ntegurarubanza cyangwa mu iburanisha.

[12] Urukiko rw'Ubujurire rurasanga ibisabwa na Niyigaba Jean, uhagarariwe na Me Dusenge Vestine by'uko aretse urubanza yabyemererwa, kuko ari uburenganinzira ahabwa n'ingingo y'itegeko yavuzwe haruguru, kandi uwo yareze akaba abyemera.

b. Kumenya niba Murangwa Yusuf yagenerwa amafaranga y'ibyagiye ku rubanza

[13] Me Habumuremyi Prosper, uhagarariye Murangwa Yusuf, avuga ko, ashingiye ku ngingo ya 124 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asaba ko Niyigaba Jean yategekwa guha Murangwa Yusuf amafaranga y'ibyo yatakaje ku rubanza, harimo n'igihembo cy'Avoka, angana n'ibihumbi magana atanu (500.000 Frw).

[14] Me Dusenge Vestine, uhagarariye Niyigaba Jean, yireguye avuga ko izo ndishyi Murangwa Yusuf asaba nta shingiro zifite, kuko Niyigaba Jean atigeze amurega, ahubwo yagobokeshejwe mu rubanza ku gahato n'Urukiko Rukuru, kandi ko mbere hose atigeze azisaba mu Rukiko Rukuru, rukaba nta n'izo rwigeze rutegeka gutanga.

UKO URUKIKO RUBIBONA

[15] 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 nk'uko ryahinduwe kugeza ubu, iteganya ibikurikira: ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza (...).

[16] Naho ingingo ya 124 y'iryo tegeko iteganya ko kureka ikirego no kureka urubanza bituma ibintu bisubira uko byari bimeze ku mpande zombi mbere y'uko Urukiko ruregerwa. Uretse ikirego cyangwa urubanza ashobora gucibwa amafaranga y'amagarama cyangwa igihembo cy'avoka n'andi yose yatanzwe n'uwo yari yareze mu gukurikirana urubanza.

[17] Izi ngingo zisomewe hamwe zumvikanisha ko mu gihe urega aretse urubanza, uregwa nawe ashobora kwishyuza ibyo yakoresheje mu rubanza. Urukiko rurasanga amafaranga y'ikurikiranarubanza Me Habumuremyi Prosper asabira Murangwa Yusuf atayagenerwa, kuko Leta y'u Rwanda, Munijust ariyo yamuhaye umuburanira, ikaba ahubwo ariyo yari ikwiye kuba isaba ayo mafaranga.

III. ICYEMEZO CY`URUKIKO

[18] Rwemeje ko Niyigaba Jean yemerewe kureka urubanza.

[19] Ruvuze ko amafaranga y'amagarama y'uru rubanza Niyigaba Jean yatanze ajurira ahwanye n'ibyakozwe mu rubanza.