Re NSABIMANA

[Rwanda URUKIKO RUKURU – RS/RECT/RAD 00001/2021/HC/MUS – (Bizaba, P.J.) 26 Mutarama 2022]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Gusaba gukosora urubanza – Ibihe byo gusaba gukosora urubanza – Mu gihe umuburanyi agaragaje ko mu rubanza rwaciwe harimo amakosa y'imyandikire ku buryo kuyarekeramo byatera ibibazo mu kururangiza, gusuzuma ishingiro ry'icyo kirego ntibikwiye kubangamirwa n'igihe cy'ukwezi kumwe giteganywa n'itegeko.

Incamake y'ikibazo: Nsabimana uhagarariwe n'umugore we Mukamusoni yaburanye n'Akarere ka Musanze aratsindwa, ku rwego rwa mbere ategekwa kukishyura amafaranga y'ikurikiranarubanza n'ayo gushorwa mu manza nta mpamvu. Yajuririye Urukiko Rukuru, Urugereko rwa Musanze n'ubundi aratsindwa ategekwa kwishyura ayo mafaranga ariko Urukiko rwarayagabanyije.

Mukamusoni yatanze ikirego muri urwo Rukiko Rukuru, asaba ko rusobanurwa rukanakosorwa kubera ko Abahesha b'inkiko babiri barurangizaga ku buryo butandukanye, aho umwe yamwishyuzaga amafaanga menshi naho undi akamwishyuza amafaranga make, bose bavuga ko yategetswe muri izo manza zombi. Muri icyo kirego cye, avuga kandi ko imyandikire y'igika cya 24 n'icya 25 cy'urubanza rwaciwe ku rwego rwa mbere kidasobanutse gikwiye gusobanurwa kugira ngo urubanza rurangizwe nta nkomyi.

Iburanisha ry'uru rubanza ryabereye mu nama y'Abacamanza, hasuzumwa ibimenyetso bitandukanye urega ashingiraho asaba gukosora urubanza, bikorwa hadahamagawe uwatanze ikirego cyangwa abandi bantu babaye mu rubanza rusabirwa gukosorwa.

Incamake y'icyemezo: Mu gihe umuburanyi agaragaje ko mu rubanza rwaciwe harimo amakosa y'imyandikire ku buryo kuyarekeramo byatera ibibazo mu kururangiza, gusuzuma ishingiro ry'icyo kirego ntibikwiye kubangamirwa n'igihe cy'ukwezi kumwe giteganywa n'itegeko. Bityo, Nsabimana Emmanuel uhagarariwe n'umugore we Mukamusoni Emerita yatinze gutanga ikirego cyo gusobanura no gukosora imanza RADA 00005/2020/HC/MUS, RAD000010/TGI/MUS, RAD00009/2019/TGI/MUS n'urubanza RAD00009/TGI/MUS ndetse nta nubwo agaragaza inenge ifatika yatuma rutarangizwa.

Ikirego nticyakiriwe.
Amagarama aherera ku isanduku ya Leta.

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 140, 190 n'iya 242.

Imanza zifashishijwe:
Re Rutagarama Eliseus, RS/RECT/RC 00001/2019/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 31/05/2019.
Rutagarama na Nzabonimana, RCAA 0007/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Tariki ya 23/12/2020, Urukiko Rukuru, Urugereko rwa Musanze rwaciye urubanza RADA 00005/2020/HC/MUS ku bujurire bw'urubanza RAD 00010/2019/TGI/MUS Nsabimana Emmanuel ahagarariwe n'umugore we Me Mukamusoni Emerita yatsinzwemo n'Akarere ka Musanze. Ku rwego rwa mbere Nsabimana Emmanuel yari yategetswe guha Akarere ka Musanze amafaranga angana na 1.000.000 Frws y'ikurikiranarubanza no gushorwa mu manza nta mpamvu naho ku rwego rw'Ubujurire Urukiko ruhindura izo ndishyi rwemeza ko agomba guha Akarere ka Musanze 400.000 Frw ahwanye n'amafaraga y'ikurikiranarubanza ku rwego rwa mbere no ku rwego rw'ubujurire, ni ukuvuga 200 000 Frw kuri buri rwego nk'uko bigaragara mu isesengura ry'urwo rubanza no mu cyemezo cyarwo, mu gika cya 17.

[2] Nyuma y'icibwa ry'urwo rubanza, Me Mukamusoni Emerita ahagarariye umugabo we Nsabimana Emmanuel yatanze iki kirego asaba gusobanura no gukosora urwo rubanza RADA 00005/2020/HC/MUS hamwe n'izindi zaciwe n'Urukiko Rwisumbuye rwa Musanze arizo RAD000010/TGI/MUS, RAD00009/2019/TGI/MUS na RAD00009/TGI/MUS ngo zabaye itegeko kuwa 24/11/2021.

[3] Avuga ko mu rubanza RADA0009/2019/TGI/MUS yatsinzwemo n'akarere ka Musanze ku rwego rwa mbere, Ubu ruri kurangizwa n'abahesha b'Inkiko (2) Uwamaliya Angelique na Kanyabugande Jean Baptiste harimo urujijo, cyane cyane mu bika byarwo bya 24, 25 na 26 rutuma zitabasha kurangizwa nta nkomyi. Asaba Urukiko gusobanura icyo rwashatse kuvuga muri Rwemeje ya 24 aho rugira ruti: rwemeje ko Nsabimana Emmanuel agomba guha akarere ka Musanze indishyi z'ikurikiranarubanza zingana n'ibihumbi Magana ane (400.000Frw) zo ku rwego rwambere rw'ubujurire. Rwemeje 25.

[4] Nsabimana avuga kandi ko Abahesha b'Inkiko babiri bari kurangiza urwo rubanza, buri wese ari kwishyuza indishyi zitandukanye n'izundi aho Uwamaliya Angelique yishyuza ibihumbi magana cyenda (900.000) Frw mu nyandiko imwe, mu yindi akishyuza 1.400.000Frw no mu yindi akishyuza 1.700.000 naho Umuhesha w'Inkiko Kanyabugande we akavuga 800.000 Frw ku manza zombi ku rwego rw'ubujurire.

[5] Iburanisha ry'uru rubanza ryabereye mu nama y'Abacamanza, hasuzumwa ibimenyetso bitandukanye urega ashingiraho asaba gukosora urubanza, bikorwa hadahamagawe uwatanze ikirego cyangwa abandi bantu babaye mu rubanza rusabirwa gukosorwa nk'uko biteganywa n'ingingo ya 140[1] n'iya 190[2] z'Itegeko N° 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.

[6] Ikibazo kigomba gusuzumwa muri uru rubanza ni:

- Kumenya niba mu rubanza RADA 00005/2020/HC/MUS hamwe n'izindi zaciwe n'Urukiko Rwisumbuye rwa Musanze arizo RAD000010/TGI/MUS, RAD00009/2019/TGI/MUS, RAD00009/TGI/MUS hari ibikwiye gusobanurwa no gukosorwa.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

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[1] Ingingo ya 140 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego gikosora urubanza kiburanishwa nk'inyandiko nsobanurakirego itanzwe n'umuranyi umwe kandi ko gikosora amakosay'imyandikire gusa. Urwo rubanza rukaba rwuzuza urubanza rwasabiwe gukosorwa.

[2] Ingingo ya 190 yo iteganya ko Umucamanza washyikirijwe ikirego, aragisuzuma, yasanga ari ngombwa ko ahamagaza uwagitanze n'abandi bose abona ko bashobora kuza muri icyo kibazo akabahamagaza.

1. **Kumenya niba mu rubanza RADA 00005/2020/HC/MUS rwaciwe n'Urukiko Rukuru hamwe n'izindi zaciwe n'Urukiko Rwisumbuye RAD000010/TGI/MUS, RAD00009/2019/TGI/MUS na RAD00009/TGI/MUS hari ibikwiye gusobanurwa no gukosorwa n'uru Rukiko**

[7] Kuwa 23/12/2021, Nsabimana Emmanuel ahagarariwe n'Umugore we Mukamusoni Emerita yatanze iki kireg oasaba Urukiko gusobanura no gukosora amakosa avuga ko ari mu manza RADA 00005/2020/HC/MUS rwaciwe n'uru Rukiko ku rwego rw'ubujurire tariki ya 23/12/2020 n'imanza RAD000010/TGI/MUS, RAD00009/2019/TGI/MUS, RAD00009/TGI/MUS ngo zabaye itegeko kuwa 24/11/2021. Avuga ko imyandikire y' igika cya 24 cy'urubanza RAD00009/2019/TGI/MUS kidasobanutse gikwiye gusobanurwa kugira ngo urubanza rurangizwe nta nkomyi. Asaba Urukiko gusobanura icyo rwashatse kuvuga muri Rwemeje ya 24 aho rugira ruti: rwemeje ko Nsabimana Emmanuel agomba guha akarere ka Musanze indishyi z'ikurikiranarubanza zingana n'ibihumbi Magana ane (400.000Frw) zo kurwego rwambere rw'ubujurire". Rwemeje 25.

[8] Ikindi avuga kidasobanutse ngo n'uko abahesha b'inkiko babiri Uwamaliya Angelique na Kanyabugande Jean Baptiste bari kurangiza urwo rubanza RAD00009/2019/TGI/MUS buri wese ari kwishyuza amafaranga atandukanye n'ay'undi ari kwishyuza. Avuga ko Uwamaliya Angelique yishyuza ibihumbi magana cyenda (900.000) Frw mu nyandiko imwe, mu yindi akishyuza 1.400.000Frw no mu yindi akishyuza 1.700.000 naho Umuhesha w'Inkiko Kanyabugande we akavuga 800.000 Frw ku manza zombi ku rwego rw'ubujurire.

UKO URUKIKO RUBIBONA

[9] Muri uru rubanza, Nsabimana Emmanuel uhagarariwe n'umugore we Mukamusoni Emerita asaba ko hasobanurwa imanza RADA 00005/2020/HC/MUS, RAD000010/TGI/MUS, RAD00009/2019/TGI/MUS n'urubanza RAD00009/TGI/MUS. Urubanza RADA 00005/2020/HC/MUS rwaciwe n'uru Rukiko Rukuru, Urugereko rwa Musanze tariki ya 23/12/2020 ku bujurire bw'urubanza RAD 00010/2019/TGI/MUS. Muri urwo rubanza ku rwego rw'ubujurire, Urukiko rwemeje ko ikirego cy'ubujurire cya Nsabimana Emmanuel nta shingiro gifite rumutegeka guha Akarere ka Musanze indishyi z'ikurikiranarubanza zingana n'ibihumbi magana ane (400 000Frw) zo ku rwego rwa mbere n'ubujurire ni ukuvuga 200 000Frw ku rwego rwa mbere na 200 000Frw ku rwego rw'ubujurire nk'uko bigaragara mu isesengura ry'urwo rubanza.

[10] Muri uru rubanza kandi Nsabimana Emmanuel avuga ko ibika bya 24, 25 na 26 by'urubanza RAD00009/2019/TGI/MUS bidasobanutse kandi ko bikwiye gukosorwa nyamara bigaragara ko urwo rubanza rwaciwe kuwa 06/03/2020, rujuririrwa muri uru Rukiko, ruburanishwa kuri numero RADA 00001/2020/HC/MUS rucibwa kuwa 23/12/2021 kandi uru rubanza RADA 00001/2020/HC/MUS akaba atarugaragaza muzo asabira gusobanura no gukosora.

[11] Muri uru rubanza kandi, Nsabimana Emmanuel agaragaza ko imanza asabira gusobanura no gukosora zabaye itegeko kuwa 24/11/2021 kandi bigaragara ko izaciwe ku rwego rw'ubujurire yakagombye kuba agaragaza ari RADA 00001/2020/HC/MUS n'urubanza RADA 00005/2020/HC/MUS zombi zaciwe kuwa 23/12/2020 bivuga ko zabaye itegeko nyuma y'ukwezi kumwe ziciwe ntizijuririrwe mu nzira ziteganywa n'amategeko (*acquired the force of res judicata since it was not appealed*) aho kuba

kuwa 24/11/2021 itariki zashiriweho inyandikompuruza (*Formule executoire*)[3] naho izaciwe ku rwego rwa mbere zaciwe kuwa 06/03/2020.

[12] Urukiko rusanga ingingo ya 140 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 Urubanza rusobanura cyangwa rukosora urundi, rukosora gusa amakosa y'imyandikire kandi ko rwuzuza urubanza rwasabiwe gusobanurwa cyangwa gukosorwa kandi ko rushobora kujuririrwa rwonyine cyangwa hamwe n'urubanza rw'iremezo mu gihe imanza zombi zishobora kujuririrwa. Iyi ngingo inateganya ko gusaba gukosora cyangwa gusobanura urubanza bikorwa mu gihe cy'ukwezi kumwe uhereye igihe umuburanyi yamenyeye imikirize y'urubanza. Igihe cy'ubujurire cy'urubanza rusobanura cyangwa rukosora urundi ko ari ukwezi kumwe gutangira kubarwa uhereye ku munsi w'isomwa ry'urwo rubanza rusobanura cyangwa rukosora urubanza rw'iremezo.

[13] Urukiko rusanga kandi hari urubanza RS/RECT/RC 00001/2019/CS rwaciwe kuwa 31/05/2019, rwa Rutagarama Eliseus rujyanye no gukosora urubanza[4] RCAA 0007/15/CS rwaciwe kuwa 13/11/2015 aho Urukiko rw'Ikirenga rwaciye urubanza ku rwego rw'ubujurire hagati ya Rutagarama na Nzabonimana, ku bujurire bw'urubanza rwari rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku kirego kijyanye n'indishyi z'akababaro uyu Rutagarama n'Abagenzi be baregeraga, hashingiwe ku rubanza nshinjabyaha rwaciwe n'Urukiko rwitwa "*La Cour d'Assises de l'Arrondissement Administratif de Bruxelles*".

[14] Nyuma y'uko Urukiko rw'Ikirenga rwemeje ko ubujurire bwa Nzabonimana nta shingiro bufite, ko ntagihindutse ku mikirize y'urubanza rwaciwe n'Urukiko Rukuru, Rutagarama yatanze ikirego avuga ko muri urwo rubanza rwajuririwe hagaragaramo amakosa mu myirondoro ye, akaba atarakosowe mu rubanza rwaciwe n'Urukiko rw'Ikirenga bikaba byaratumye Banki itamuha amafaranga yatsindiye bityo, akaba asaba ko yakosorwa.

[15] Ku kibazo kijyanye n'ibihe byo gukosora urubanza, Urukiko rwasanze ko gusaba gukosora urubanza bigomba gukorwa mu gihe kitarenze ukwezi nkuko itegeko rigenga imiburanishirize y'imanza mbonezamubano, ubucuruzi, umurimo n'ubutegetsi ribiteganya mu ngingo yaryo ya 140 yavuzwe haruguru. Rusobanura ko Umushingamategeko ashyiraho ibyo, byari ugukumira ko hagira umuburanyi ubona ko yarengeje ibihe byo kujuririra urubanza, akifashisha inzira yo kurukosoza cyangwa kurusobanuza, kugirango ibyo bihe byo kujurira bizatangire kubarwa uhereye ku munsi urubanza ku kirego cyo gukozoza cyangwa gusobanuza ruciriweho. Aha Urukiko rw'Ikirenga rwasobanuye ko iyo umuburanyi agaragaje komu rubanza rwaciwe harimo amakosa y'imyandikire ku buryo kuyarekeramobyatera ibibazo mu kururangiza, gusuzuma ishingiro ry'icyo kirego bidakwiye kubangamirwa n'igihe cy'ukwezi kumwe.

[16] Isesengura rya Dosiye y'uru rubanza, rigaragaza ko imanza Nsabimana Emmanuel asaba ko zisobanurwa kandi zigakosorwa ari RADA 00005/2020/HC/MUS, RAD000010/TGI/MUS, RAD00009/2019/TGI/MUS n'urubanza RAD00009/TGI/MUS ariko bikaba bigaragara ko yanditse numero RAD00009/2019/TGI/MUS inshuro ebyeri, bivuga ko yashakaga kuvuga numero RADA00001/2020/HC/MUS yaciwe ku rwego rw'ubujurire bw'urwo rubanza RAD 00009/2019/TGI/MUS.

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[3] Ingingo ya 242 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 inyandikompuruza ari ikimenyetso kigaragaza ko ibyemejwe mu nyandikompesha bishobora guhita bishyirwa mu bikorwa ku neza cyangwa ku ngufu za Leta.

[4] Reba ku rubuga https://decisia.lexum.com/rlr/sc/kn/item/519815/index.do?q=Rutagarama+Eliseus+, rwasuwe kuwa 25/01/2022.

[17] N'ubwo rero bigaragara ko yari kuba asaba gukosora urubanza RADA 00005/2020/HC/MUS rwaciwe ku bujurire bw'urubanza RAD 00010/2019/TGI/MUS, n'urubanza RADA00001/2020/HC/MUS atagaragaje rwaciwe ku bujurire bw'urubanza RAD00009/TGI/MUS, bigaragara ko zombi zaciwe kuwa 23/12/2020 naho izo ku rwego rwa mbere zicibwa kuwa 06/03/2020 nk'uko byagaragajwe haruguru.

[18] Isesengura rya dosiye rikaba rigaragaza kandi ko mu manza abyeri zavuzwe haruguru zaciwe ku rwego rw'ubujurire, mu rubanza RADA 00001/2020/HC/MUS hemejwe ko ubujurire bwa Nsabimana Emmanuel nta shingiro bufite, ko icyemezo cyafashwe n'Urwego rw'Umurenge wa Musanze tariki ya 25/03/2019, kigakosorwa n'Akarere ka Musanze Cyubahirije amategeko, naho mu rubanza RADA 00005/2020/HC/MUS yasabagamo indishyi hemezwa ko indishyi asaba zikomoka ku kuvogererwa urugo no gusenyerwa uruzitiro avuga, nta shingiro zifite.

[19] Muri izi manza zombi, bigaragara ko Urukiko rwamutegetse guha Akarere ka Musanze amafaranga y'ikurikiranarubanza angana n'ibihumbi Magana ane (400 000Frw) muri buri rubanza ni ukuvuga ibihumbi Magana inani (800 000frw) mu manza zombi. Mu isesengura ry'izi manza, Urukiko rwavuze ko agomba guha Akarere ka Musanze ibihumbi Magana abiri ku rwego rwa mbere n'ibihumbi Magana abiri ku rwego rw'ubujurire.

[20] Isesengura rya dosiye ryerekana na none ko ibyemezo byafashwe mu manza zagaragajwe haruguru ku rwego rw'ubujurirere nta kidasobanutse kirimo cyangwa ngo habe harimo ikosa ry'imyandikire haba ku byemezo byafashwe bijyanye n'umubare w'amafaranga Nsabimana yaciwe agomba guha akarere cyangwa ku mazina y'ababuranyi. Nta n'ubwo hagaragara irindi kosa ry'imyandikire ryatuma urubanza rutabasha kurangizwa ku buryo byaba aribyo Nsabimana Emmanuel ashingiraho atanga iki kirego nyuma y'igihe cy'ukwezi giteganywa n'ingingo ya 140 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ngo rube rwasobanurwa cyangwa rukosorwe hashingiwe ku rubanza RS/RECT/RC 00001/2019/CS rwaciwe n'urukiko rw'Ikirenga kuwa 31/05/2019, rwavuzwe haruguru.

[21] Kuba avuga ko mu gika cya 24, 25 na 26 ibyanditswemo bidasobanutse ku buryo imanza zitarangizwa nta nkomyi ibaye, Urukiko rusanga ibyo avuga atari ukuri, atari nako byanditswe nk'uko kopi z'izi manza zibyerekana ndetse urubanza rufite ibyo bika akaba atari RADA 00005/2020/HC/MUS cyangwa RAD000010/TGI/MUS ahubwo ni RADA 00001/2020/HC/MUS kandi narwo mu gika cyarwo cya 25 akaba ariho handitse ko Nsabimana Emmanuel agomba guha Akarere ka Musanze indishyi z'ikurikiranarubanza zingana n'ibihumbi magana ane (400 000Frw) zo ku rwego rwa mbere n'ubujurire. Ibyo avuga ko handitse indishyi z'ikurikiranarubanza zingana n'ibihumbi Magana ane (400.000Frw) zo kurwego rwambere rw'ubujurire. Rwemeje 25. Bikaba ntaho bigaragara ariwe ubyivugira.

[22] Hashingiwe rero kuri ibyo byose bimaze kugaragazwa haruguru, aho bigaragara ko Nsabimana Emmanuel uhagarariwe n'umugore we Mukamusoni Emerita yatinze gutanga iki kirego cyo gusobanura no gukosora imanza zavuzwe haruguru kandi akaba ataragaragaje intenge ifatika yatuma rutarangizwa dore ko Abahesha b'Inkiko avuga nta kibazo bagaragaje kitumvikana muri izo manza, Urukiko rusanga ikirego cye gisaba gusobanura no gukosora imanza zavuzwe haruguru kidakwiye kwakirwa ngo gifatweho icyemezo mu mizi y'urubanza.

III. ICYEMEZO CY'URUKIKO

[23] Rwemeje ko ikirego cya Nsabimana Emmanuel uhagarariwe n'umugore we Me Mukamusoni Emerita kitakiriwe.

[24] Rwemeje ko uru rubanza rwuzuza imanza yasabiye gusobanura no gukosora RADA 00005/2020/HC/MUS & RAD000010/TGI/MUS n'urubanza RADA 00001/2020/HC/MUS & RAD00009/2019/TGI/MUS.

[25] Rutegetse ko amafaranga y'amagarama y'ibyakozwe byose muri uru rubanza, ahererera mu isanduku ya Leta.