MBARUSHIMANA v MUKABEGA

[Rwanda URUKIKO RUKURU - RCA 00047/2023/HC/NYZ (Mbarushimana, P.J., Badara, Udahemuka, J.) 13 Kamena 2024]

Amategeko agenga imiburanishirize y'imanza – Imanza mbonezamubano - Gusiba urubanza mu bitabo by'urukiko – Impamvu idasanzwe kandi ikomeye yabujije umuburanyi kuburana – Urukiko ni rwo rufite ububasha bwo kwemeza ko impamvu yatanzwe ituma umuburanyi atitaba iburanisha idasanzwe kandi ikomeye.

Incamake y'ikibazo: Niyonteze yashakanye na Mbarushimana mu buryo bwemewe n'amategeko. Mu gihe babanaga baje kugura ikibanza ariko ntibahita bikibaruzaho nyuma umubano wabo uza kutagenda neza biyemeza gutandukana. Mu gihe batangaga ikirego cy'ubutane, Niyonteze yatanze ikindi kirego asaba ko uwo mutungo wabandikwaho we n'umugabo we maze Urukio rwemeza ko umutungo UPI: 2/08/10/02/1454 wanukuwe kuri Mukabega ukandikwa kuri Mbarushimana na Niyonteze.

Mbarushimana ntiyishimiye uyu mwanzuro awujurira mu Rukiko Rukuru Urugereko rwa Nyanza avuga ko atigeze agura ubwo butaka ariko ku munsi w'iburanisha ntiyitaba Mukabega asaba ko Urubanza rusibwa. Urukiko rwasuzumye ikibazo cyo kumenya icyakorwa mu gihe uwajuriye atitabye.

Ku munsi w'ibiranisha ry'urubanza Mbarushimana ntiyigeze yitaba ahubwo Avocat we yashyize muri IECMS icyemezo cya muganga kigaragaza ko arwaye. Mukabega avuga ko Mbarushimana nta mwunganizi afite kuko uwo yita umwunganizi we atigeze yihuza n'ikirego bityo uwanditse mu cyemezo cya muganga cy'uburwayi ntaho ahuriye n'ikirego ibi bikaba byafatwa nko kutitaba ku bushake bwe, uru rubanza rukaba rukwiye gusibwa.

Incamake y'icyemezo: 1. Urukiko ni rwo rufite ububasha bwo kwemeza ko impamvu yatanzwe ituma umuburanyi atitaba iburanisha, idasanzwe kandi ikomeye.

2. Mu gihe uwajuriye atitabye nta mpamvu agaragaje yatumye atitaba, biba bigaragaza ko nta nyungu afite muri urwo rubanza muri ibyo bihe Urukiko rusiba urubanza.

Urubanza RCA 00047/2023/HC/NYZ rurasibwe.

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

Imanza zifashishijwe

RCOMAA 00080/2019/CA, Karagire n'abandi na Mutabazi n'abandi, rwaciwe n'Urukiko rw'Ubujurire ku wa 22/01/2020;

RS/INJUST/RCOM 00009/2022/SC, SACCO Ifumba y'Ubukire na Uwimana n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 15 Werurwe 2024.

Urubanza

I. IMITERERE Y' URUBANZA

[1] Niyonteze Chantal yashakanye na Mbarushimana Jean Pierre babana nk `umugore n` umugabo mu buryo bwemewe n'amategeko , avuga ko muri ibyo bihe by` umubano wabo ngo baguze ikibanza na Mukabega Jacqueline giherereye mu Mudugudu wa Kigese, Akagari ka Kigese, Umurenge wa Rugalika mu Karere ka Kamonyigifite No UPI: 2/08/10/02/1454, bakigura amafaranga 550.000Frws ariko ihererekanya bubasha kuwo bakiguze ntiryakorwa , nyuma imibanire yabo ntiyagenze neza bituma biyambaza inkiko ngo zibatandukanye , nkuko ubutane bugira ingaruka ku bijyanye n` imitungo ; Niyonteze Chantal yahise atanga ikirego asaba ko uwo baguze ikibanza yabakorera mutation we n'umugabo we bityo mu igabana ry` umutungo mu gihe cy` ubutane uwo mutungo ukazajya mu mitungo igomba kugabanwa.

[2] Nyuma y`iburanisha ry `urubanza , Urukiko Rwisumbuye rwararusomye rwemeza ko umutungo ufite Nº UPI: 2/08/10/02/1454 wandukuwe kuri Mukabega Jacqueline ukandikwa kuri Mbarushimana Jean Pierre na Niyonteze Chantal , uyu mwanzuro w` Urukiko ntiwanyuze Mbarushimana Jean Pierre ahita awujuririra mu Rukiko Rukuru Urugereko rwa Nyanza asaba ko Urukiko rwahindura imikirize y` urubanza ngo cyane ko Mbarushimana Jean Pierre yahamyaga ko ubwo butaka we n` umugore we batigeze babugura, Ku munsi w` iburanisha Mbarushimana ntibitabye iburanisha , umwunganizi wa Mukabega Jacqueline yahise asaba ko urubanza rwasibwa nyuma yo kubona imiterere y` urubanza Urukiko rusanga , ingingo ikwiye gusuzumwa ari iyi ikurikira: Kumenya icyo amategeko ateganya mu gihe uwajuriye atitabye.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Kubijyanye no kumenya icyo amategeko ateganya mu gihe uwajuriye atitabye

[3] Ku munsi w` iburanisha ry` urubanza uwajuriye, byagaragaye ko atitabiriye iburanisha, nyamara yari asanzwe azi umunsi w` iburanisha cyane ko yari ahujwe narwo , gusa muri IECMS hakaba haragaragaragamo inyandiko yanditswe n` avoka asaba isubika ry`urubanza bitewe n` uburwayi yagize, akaba yarabigaragarishije ikiruhuko yahawe na muganga .

[4] Maître Yamuragiye yavuze ko Mbarushimana Jean Pierre nta mwunganizi mu mategeko afite , ngo cyane ko uwo yise umwunganizi we atigeze ahuzwa n` ikirego ko bityo rero ikiruhuko cy` uburwayi yatanze kivuga ko arwaye nta gaciro bikwiye guhabwa kuko icyo kiruhuko cyaba cyarahawe n'udafite icyo ahuriyeho n`urubanza ko ahubwo ibyakozwe bigaragaza neza ko Mbarushimana Jean Pierre mu gufungura IECMS account, yakoresheje izina rya Nzabamwita Jean Claude ari nayo mpamvu ibyo agenda yandika muri system ubona ari nk'aho byanditse na Nzabamwita Jean Claude nyamara mu by`ukuri atariwe wabyanditse cyane ko muri system mu gice cyagenewe ababuranyi bigaragara ko nta Mwunganizi afite wahujwe n` urubanza.

III.UKO URUKIKO RUBIBONA

[5] Urukiko rusanga uretse kuba Maître Yamuragiye yaravuze ko Avocat atari ahujwe n` ikirego , n'iyo aza kuba ahujwe nacyo nta kintu kinini byari kumumarira si buri gihe ikiruhuko

cyatanzwe n` umuganga gihabwa agaciro , kigomba gusuzumwana ubushishozi , mu rwego rw`imikorere myiza mu gihe avoka agize ikibazo cy` uburwayi aba ashobora kwiyambaza undi bakorana , aho kugirango yice gahunda y` inkiko ziba zaratanze mu rwego rwo kwihutisha imanza hagamije gutanga ubutatabera bwihuse, Urukiko kandi ntirwanabura kuvuga ko mu gutinza urubanza nkana , byongeye gushingirwa n` uko kuva Nzabamwita Jean Claude yabona repos médical ku wa 08/05/2024 atahise ayishyira muri system ahubwo yayishyizemo kuwa 14/05/2024 saa 16h07 iyo ayishyiramo bwangu hari gufatatwa izindi ngamba zijyanye no gutanga service nziza , bityo urundi ruhande ntirukubitire amaguru ubusa , Urukiko kandi rusanga ukubura kwa Nzabamwita Jean Claude Muri uru rubanza atari ibya none kuko , no mu nama ntegurarubanza nabwo atigeze yitaba.

[6] Urukiko rusanga kudaha ishingiro buri kiruhuko cyatanzwe na muganga cyose atari umwihariko w` uru rukiko kuko n` urukiko rw` Ikirenga niko rwabyemeje aho rwabivuze muri aya amgambo : ``Hashingiwe ku bimaze kuvugwa, nta kibuza Urukiko gusuzuma niba repos médical itanzwe mu rukiko ikwiye kwemerwa nk'impamvu idasanzwe kandi ikomeye ibuza umuburanyi kwitabira iburanisha yatumijwemo mu buryo bwubahirije amategeko, kugira ngo yemeze ko koko iyo mpamvu ari yo, idasanzwe kandi ikomeye, nk'uko biteganywa n'ingingo ya 55 y'Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Ibi bivuze rero ko Umucamanza aramutse asanze iyo repos medical ishobora gukemangwa afite ububasha bwo kutayiha agaciro igihe idashimangiwe n'ikindi kimenyetso.''[1]

[7] Urukiko kandi rusanga atari muri uru Rukiko Rukuru gusa atitabye kuko no mu Rukiko Rwisumbuye mu rubanza rwajuririrwe nabwo mu bihe 2 byose, ntiyigeze yitaba urukiko , mucamanza akaba yarabyanzuyeho mu buryo bukurikira: ``Abaregwa nta n'umwe witabye urukiko,ariko bakaba barahamagawe mu Nama Ntegurarubanza ntibitaba,ntibanavuga n'impamvu yababujije;Me Nzamwita Safari Jean Claude umunsi w'iburanisha yagaragaje ko arwaye atanga icyemezo cya repos medical ariko urukiko ntirwagiha agaciro kubera ko cyagaragayemo amakosa akomeye kuko cyanditse ko gikozwe kuwa 8/6/2023 kandi iburanisha ryari kuwa 6/6/2023;ni ukuvuga ko cyagaragaye ko cyakozwe nyuma y'iburanisha kandi bitashoboka''.

[8] Icyakomeje kugaragara muri uru rubanza ni uko abajuriye hamwe n` uwo bahamyako ari avocat wabo bakomeje kugaragaza ugutinza urubanza nkana, kuko mu bihe 4 byose , ntibigeze bitaba bo ubwabo, avoka wabo nawe ntiyitabye kuko mu bihe byose yagaragaje ko arwaye , hejuru yabyose ariko kuba nkuko byaragaragajwe hejuru nta kigaragaza ko ahujwe n` urubanza ibi nabyo bifatwa ko ari uburyo bwo kujijisha urukiko ngo barunyure mu rihumye bityo rube rwakwemerera umuntu udafite aho ahutiye n` urubanza kurugiramo ijambo , mu gukomeza kujijisha urukiko kandi bikaba byaragaragaye ko Nzabamwita Jean Claude ,atigeze anashyira umukono ku mwanzuro byitwa ko yakoze.

[9] Nyuma y' ubusesenguzi bumaze gukorwa hejuru Urukiko rwanzura ko, ababuranyi bombi batigeze bitaba iburanisha, cyane ko n` uwo bise avoka wabo kugeza ubu urukiko rutamufata nk` avoka muri uru rubanza, nubwo yabawe kandi impamvu yo gusubikwa ikaba itemejwe nkuko

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[1] RS/INJUST/RCOM 00009/2022/SC, RS/INJUST/RCOM 00009/2022/SC, SACCO Ifumba y'Ubukire na Uwimana n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 15 Werurwe 2024.

byasobanuwe , bityo rero uko kutitaba kwabo batanagaragarije impamvu ituma batitaba, ibi bikaba bigomba gufatirwa umwanzuro ujyanye n` amategeko.

[10] Urukiko rusanga umushingamategeko yaratanze umucyo kubijyanye n` ibura ry` uwareze akaba yarabivuze muri aya magambo: 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 kugira ngo urega yongere ahamagazwe[2] muri uru rubanza kuba Mbarushimana Jean Pierre afatwa ko yareze ni uko ariwe wajuriye.

[11] Inkiko zitadukanye zishingiye kuri iriya ngingo imaze kuvugwa hejuru zashyizeho umurongo w` uko mu gihe uwajuriye atitabye nta mpamvu agaragaje yatumye atitaba, biba bigaragaza ko nta nyungu afite muri urwo rubanza muri ibyo bihe urukiko rusiba urubanza, uwo murongo ukaba ugira uti : `` Ikirego gisibwa mu bitabo by'urukiko iyo ababuranyi berekana ko badafite inyungu zo kuburanazimwe mu mpamvu zituma ikirego gisibwa mu bitabo by'urukiko n'ukudatanga imyanzuro,kutagira Avoka no kutitabira inama nteguraruba nza, ivi myitwarire yerekana ko ababuranyi nta nyungu bafite yo kuburana''[3] Urukiko rusanga rwemeranywa n` uyu murongo, kubw` ibyo rwanzuye ko urubanza RCA 00047/2023/HC/NYZ rusibwa .

III ICYEMEZO CY` URUKIKO.

[12] Rwemeje ko urubanza RCA 00047/2023/HC/NYZ rusibwe;

[13] Rutegetse ko urubanza RCA 00047/2023/HC/NYZ rusibwe.

[14] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe muri uru rubanza.

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[2] Ingingo ya 54 y` No 22/2018 ryo ku wa 29/04/2018 Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.
[3] RCOMAA 00080/2019/CA, Karagire n'abandi na Mutabazi n'abandi, rwaciwe n'Urukiko rw'Ubujurire ku wa 22/01/2020.