UBUSHINJACYAHA v RUTAYISIRE

[Rwanda URUKIKO RUKURU/HCCIC – RPA/GEN00029/2024/HC/HCCIC (Muhima P.J., Nsanzimana na Byakatonda J.), 25 Nyakanga 2024]

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Gusubirishamo urubanza – Mu gusubirishamo urubanza mu manza z'inshinjabyaha icyo uregwa asabwa ni ukugaragaza impamvu atitabiriye iburanisha mu mwanzuro we mu gihe atanga akirego nk'uko biteganywa n'amategeko, akaba nta kindi gihe kitari iki agomba kuba yagaragarijemo iyo mpamvu ikomeye.

Incamake y'ikibazo: Uru rubanza rukomoka ku kirego cya Rutayisire yatanze mu Rukiko Rwisumbuye rwa Muhanga gisubirishamo urubanza RP/GEN 00024/2022/TGI/MHG rwaciwe kuwa 23/11/2023 avuga ko impamvu ikomeye yatumye atitaba urubanza ari uko yari arwaye, atanga n'ikimenyetso cy'inyandiko ya muganga yo ku wa imuha ikiruhuko cy'uburwayi. Urwo Rukiko rwaciye urubanza rwemeza ko ikirego cye kitakiriwe. Urukiko rwanze iyi mpamvu kuko atihutiye kuyimenyesha urukiko kubera ko iyo nyandiko ya muganga yatanzwe ku wa 02/10/2023, urubanza asaba gusubirishamo ruburanishwa ku wa 04/10/2023, ariko ayishyira muri sisitemu y'ikorabuhaanga y'imicungire y'imanza [Integrated Electronic Case Management System (IECMS)] ku wa 05/12/2023, nyuma y'amezi abiri urubanza asubirishamo ruburanishijwe.

Rutayasire yajuririye Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibe avuga ko urubanza rwajuririwe rutakiriye ikirego cye rwirengagije impamvu ikomeye rwari rwagaragarijwe ruvuga ko itamenyeshejwe urukiko gusa mu gihe ntacyo ruyinenga, nyamara kutayimenyekanisha byaratewe n'uko yari arwaye ku buryo bitagakwiye kumuviramo igihano cyo kuburanishwa adahari, cyane ko n'iyo aza gushobora gushyira inyandiko ya muganga muri systeme igaragaza ko arwaye urubanza rwari gusubikwa.

Ubushinjacyaha n'Abaregera indishyi bo baburanye bavuga ko impamvu y'ubujurire ya Rutayisire idafite ishingiro kuko adashobora kugaragaza inenge iri muri uru rubanza ajuririra kubera ko iyo aza kuba afite inyandiko ya muganga (repos medical) aba yarayishyize muri systeme agasaba urukiko gupfundura iburanisha.

Incamake y'icyemezo: Mu gusubirishamo urubanza mu manza z'inshinjabyaha icyo uregwa asabwa ni ukugaragaza impamvu atitabiriye iburanisha mu mwanzuro we mu gihe atanga akirego nk'uko biteganywa n'amategeko, akaba nta kindi gihe kitari iki agomba kuba yagaragarijemo iyo mpamvu ikomeye, bityo ikirego gisaba gusubirishamo urubanza cya Rutayisire kikaba cyaragombaga kwakirwa kuko ibisabwa kugira ngo ugusubirishamo urubanza kwakirwe yari yabigaragaje kandi nta nenge urukiko rwemeje yari ibirimo uretse kuvuga gusa ko byagaragajwe nyuma y'igihe kinini nyamara byaragaragajwe mu buryo no mu bihe itegeko riteganya.

Ubujurire bufite ishingiro;
Urubanza rwoherejwe mu Rukiko Rwisumbuye rwa Muhanga kugira ngo ruburanishwe mu mizi.

Amategeko yashingiweho:

Itegeko No 027/2019 ryo kuwa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 173 n'iya 193.

Imanza zifashishijwe:

Sacco Ifumba y'ubukire vs Uwimana n'abandi, RS/INJUST/RCOM 00009/2022/SC rwaciwe n'Urukiko Rw'Ikirenga ku wa 15/03/2024.

Urubanza

IMITERERE Y'URUBANZA

[1] Ku wa 05/12/2023 Rutayisire Protogène yatanze ikirego gisubirishamo urubanza nomero RP/GEN 00024/2022/TGI/MHG rwaciwe kuwa 23/11/2023 avuga ko impamvu ikomeye yatumye atitaba urubanza ari uko yari arwaye, atanga n'ikimenyetso cy'inyandiko ya muganga yo ku wa 02/10/2023 imuha ikiruhuko cy'uburwayi. Ku wa 19/04/2024, Urukiko Rwisumbuye rwa Muhanga rwaciye urubanza no RP/GEN 00037/2023/TGI/MHG rwemeza ko ikirego cyatanzwe na Rutayisire Protogène cyo gusubirishamo urubanza kitakiriwe.

[2] Urukiko rwanze iyi mpamvu kuko atihutiye kuyimenyesha urukiko kubera ko iyo nyandiko ya muganga yatanzwe ku wa 02/10/2023, urubanza asaba gusubirishamo ruburanishwa ku wa 04/10/2023, ariko ayishyira muri sisitemu y'ikorabuhaanga y'imicungire y'imanza [Integrated Electronic Case Management System (IECMS)] ku wa 05/12/2023, nyuma y'amezi abiri urubanza asubirishamo ruburanishijwe, hashingiwe ku ngingo ya 175, igika cya mbere n'icya kabiri, y'Itegeko n° 027/2019 ryo kuwa 19/09/2029 ryerekeye imiburanishirize y'imanza z'inshinjabyaha no ku rubanza RS/INJUST/RCOM 00009/2022/SC1 rwaciwe n'Urukiko rw'Ikirenga aho rwasuzumye ibirebana n'agaciro gahabwa inyandiko ya muganga y'ikiruhuko cy'uburwayi nk'ikimenyetso cy'impamvu ikomeye y'uburwayi yatumye umuburanyi ataitabira iburanisha.

[3] Rutayisire Protogène yajuririye uru rubanza, ikirego cye cyandikwa kuri nomero RPA/GEN 00029/2024/HC/HCCIC, ruburanishwa ku wa 26/06/2024 ababuranyi bitabiriye iburanisha, Rutayisire Protogène yunganiwe na Me Nyandwi Jean Baptiste, Ubushinjacyaha buhagarariwe na Mbaragagijimana Desire, Umushinjacyaha ku rwego rw'Igihugu, naho abaregera indishyi bahagarariwe na Me Karenzi Jean Paul.

[4] Muri rusange, Rutayisire Protogène n'umwunganizi we banenga urubanza rwajuririwe kuba rutarakiriye ikirego rwirengagije impamvu ikomeye rwari rwagaragarijwe nk'uko amategeko abiteganya ruvuga ko itamenyeshejwe urukiko gusa mu gihe ntacyo ruyinenga, nyamara kutayimenyekanisha byaratewe n'uko yari arwaye ku buryo bitagakwiye kumuviramo igihano cyo kuburanishwa adahari, cyane ko n'iyo aza gushobora gushyira inyandiko ya muganga muri systeme igaragaza ko arwaye urubanza rwari gusubikwa.

[5] Ubushinjacyaha n'Abaregera indishyi asubije kuri iyi mpamvu y'ubujurire avuga ko idafite ishingiro kuko Rutayisire n'umwunganizi we badashobora kugaragaza inenge iri muri uru rubanza bajuririra kubera ko iyo aza kuba afite iyo repos medical aba yarayishyize muri systeme agasaba urukiko gupfundura iburanisha.

[6] Urukiko rwasuzumye ikibazo kijyanye no kumenya niba impamvu y'uburwayi Rutayisire Protogène yagaragaje nk'impamvu ikomeye yatumye atitabira iburanisha yaragombaga kwakirwa.

I. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Ku byerekeye kumenya niba impamvu y'uburwayi Rutayisire Protogène yagaragaje nk'impamvu ikomeye yatumye atitabira iburanisha yaragombaga kwakirwa

[7] Rutayisire Protogène n'umwunganizi we bavuga ko ku wa 2/10/2023 yarwaye ajya kwivuza i Kibilizi kure y'urugo rwanjye ruri i Musambira, amaze kunywa ibinini bari bamuhaye ararembा, kuko agira crise ya asima, urubanza ruburanishwa ku wa 4/10/2023 arwaye, maze kugarura ubwenge yibona ari kwa muganga. Asobanura ko yageze mu bitaro ku wa kabiri avayo ku wa gatatu ariko atameze neza yongera kugarura ubuzima ku wa gatandatu, ajya kureba Me Nyandwi, amubwira ko nta kindi yakora uretse gutegereza rugasomwa ndetse nyuma y'aho akaba yaragiye kureba Perezida w'Urukiko Rwisumbuye rwa Muhanga, wamubwiye ko yazasubirishamo, ko urubanza rumaze gusomwa ku wa 23/11/2023, ku wa 5/12/2023 atanga ikirego cyo gusubirishamo urubanza, anashyiramo n'ikimenyetso cy'inyandiko ya muganga itanga ikiruhuko cy'uko yari arwaye igihe urubanza rwaburanishwaga adahari.

[8] Banavuga ko rero hashingiwe ku biteganywa n'ingingo ya 175 y'itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha, basanga urukiko rwaritiranyije ibintu kuko inyandiko ya muganga itanga ikiruhuko itashyizwe muri sisitemu hashize amezi 2 ku bwo kuyimenyekanisha ahubwo yashyizwemo mu gihe cyo gutanga ikirego cyo gusubirishamo urubanza nk'uko amategeko abiteganya. Basaba Urukiko kumva uburemere bw'igihano cy'igifungo cy'imyaka itanu (5) Rutayisire yahawe, maze agahabwa amahirwe yo kongera kuburanishwa.

[9] Me Karenzi Jean Paul, mu izina ry'abaregera indishyi, yavuze ko ubujurire bwa Rutayisire nta shingiro bufite kuko iyo aza kuba afite iyo nyandiko ya muganga itanga ikiruhuko aba yarayishyize muri systeme agasaba urukiko gukora *reouverture* cyane ko isomwa ry'uru rubanza ryasubitswe kenshi ku buryo byari guha Rutayisire umwanya wo gushyira muri dosiye iyo nyandiko ya muganga. Yakomeje avuga ko imyitwarire ye yo kwihana Abacamanza bose, Abashinjacyaha n'Abanditsi igaragaza ko kutaza kuburana yabikoze ku mpamvu ze atari arwaye, ko ndetse hakorwa n'iperereza hakamenyekana niba koko iyo nyandiko ya muganga itanga ikiruhuko yarakorewe mu bitaro bya Kibilizi.

UKO URUKIKO RUBIBONA

[10] Urukiko rusanga ingingo ya 173, mu bika bya 2 na 3, y'itegeko No 027/2019 ryo kuwa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha uko ryavuguwe kugeza ubu iteganya ko gusaba ko urubanza rusubirishwamo bisabwa n'uwarezwe mu rukiko rwaciye urubanza rusabirwa gusubirishwamo mu buryo bumwe n'ubwo gutanga ikirego kandi mu mwanzuro we usaba ko urubanza rusubirishwamo agomba kugagaragaza impamvu zikomeye zatumye ataboneka mu iburanisha ry'urubanza rusabirwa gusubirishwamo. Naho iya 175, igika cya 1 n'icya 2 y'iryo tegeko yo iteganya ko gusubirishamo urubanza byemerwa gusa iyo uregwa utaritabye mbere agaragaje impamvu ikomeye yamubujije kwitaba kandi ko Urukiko rwaregewe ari rwo rugena mu bushishozi bwarwo agaciro ruha impamvu itanzwe yatumye umuburanyi atitaba.

[11] Isesengura ry'izi ngingo rigaragaza ko inshingano usaba ko urubanza rusubirwamo afite ari iyo kugaragaza mu myanzuro ye itanga ikirego impamvu ikomeye yatumye ataboneka mu iburanisha. Iri sesengura rigaragaza kandi ko Urukiko ari rwo rugena, mu bushishozi bwarwo, niba impamvu yatanzwe yafatwa nk'impamvu ikomeye yatumye uwaciriwe urubanza atitabira iburanisha ituma ugusubirishamo urubanza kwe kwemerwa.

[12] Urukiko rusanga urukiko rubanza rutarahaye agaciro impamvu ikomeye RUTAYISIRE Protogène y'uburwayi yatangiraga ikimenyetso kigizwe n'inyandiko y'ikiruhuko cy'uburwayi yo ku wa 02/04/2023 kubera ko iburanisha ryarabaye ku wa 4/10/2023 ariko ntiyihutire kuyimenyesha urukiko ahubwo akayishyira muri IECMS ku wa 05/12/2023 nyuma y'amezi abiri. Urukiko rwisumbuye rukaba rwarageze kuri uyu mwanzuro rwifashishije urubanza RS/INJUST/RCOM 00009/2022/SC rwaciwe n'Urukiko rw'Ikirenga aho rutahaye agaciro inyandiko ya muganga itanga ikiruhuko cy'uburwayi yari yatanzwe nk'ikimenyetso cy'impamvu ikomeye n'umuburanyi witwa SACCO IFUMBA Y'UBUKIRE wabyutsaga urubanza rwasibye ubujurire bwe kubera ko Me Nambajimana Jean Baptiste wari uyihagarariye atari yitabiriye iburanisha kandi yari yarahamagawe mu buryo bwubahirije amategeko.

[13] Muri make, Urukiko rw'Ikirenga rwasuzumye ikirego cy'akarengane cyari cyatanzwe na SACCO IFUMBA Y'UBUKIRE iburanirwa Me Nambajimana Jean Baptiste wavugaga ko akarengane kari mu rubanza RCOM 00027/2020/HCC gashingiye ku kuba Sacco yarangiwe kubyutsa urubanza no RCOMA 00163/2020/HCC kandi yaragaragaraije urukiko impamvu ifatika y'uburwayi yatumye avoka wayo atitabira iburanisha ry'urubanza ryo kuwa 10/08/2020 nk'uko bigaragazwa n'icyemezo cya muganga cyerekana ko kuva ku wa 10/8/2020 kugeza ku wa 13/08/2020 yari arwaye ntacyo abasha gukora, iyi ikaba impamvu yari gutuma ikirego cyo kubyutsa cyakirwa kigasuzumwa.

[14] Urukiko Rw'Ikirenga, nyuma yo gusuzuma icyo abahanga bavuga ku gaciro k'inyandiko ya muganga y'ikiruhuko cy'uburwayi no ku bubasha bw'urukiko bwo kuyisuzuma nk'ikimenyetso cy'impamvu ikomeye yatumye umuburanyi atitabira iburanisha, rwasanze umuburanyi utari bushobore kwitabira iburanisha ku mpamvu iyo ari yo yose ashobora kubimenyesha Urukiko mu buryo butandukanye, runasanga kudatangira igihe inyandiko ya muganga itanga ikiruhuko cy'uburwayi cyangwa ikindi kimenyetso kigaragaza impamvu umuburanyi atari bwitabire cyangwa atitabiriye iburanisha yahamagajwemo bigaragaza umwete muke, kudaha agaciro urubanza cyangwa kutubahiriza urukiko [...], maze rwanzura ko ari ngombwa ko umuburanyi yihutira kumenyesha urukiko iyo mpamvu kugira ngo umucamanza ashobore kubisuzuma no kubifataho umwanzuro ukwiye[1].

[15] Rushingiye kuri ibyo bisobanuro, rwasuzumye icyatumye Me Nambajimana Jean Baptiste atitabira iburanisha ntanabimeneshe urukiko, rusanga kuwa 10/08/2020 mu masaha y'umugoroba hari ibikorwa yakoze mu rundi rubanza muri IECMS ndetse hari inama ntegura rubanza muri uru rubanza atitabiriye ndetse atanamenyesheje urukiko icyamubujije kurwitaba, bituma rwanzura ko kuba ataramenyesheje urukiko ku gihe ko atari bushobore cyangwa atashoboye kwitabira iburanisha ngo anatange ikibyerekana ntanashobore gusobanura impamvu hari ibikorwa yakoze ku wa 10/08/2020 nyamara avuga ko yarwaye arembye, bigaragaragaza ko atakoresheje umwete wagombaga kumuranga nk'uwahamagajwe n'Urukiko mu buryo bwubahirije amategeko, ko

[1] Ibika kuva ku cya [23] kugeza ku cya [27] by'urubanza RS/INJUST/RCOM 00009/2022/SC.

atanitaye ku miburanishirize y'urwo rubanza, ko atanitwaye kinyamwuga nka Avoka ufite inshingano yo kunganira ubutabera[2].

[16] Uru rukiko rusanga n'ubwo muri uru rubanza rwaciwe n'Urukiko rw'Ikirenga no mu rubanza rwa Rutayisire Protogène hagaragaramo ikibazo cyo kugaragaza impamvu ikomeye yatumye umuburanyi atitabira iburanisha yatuma urubanza rwakirwa mu gihe umuburanyi abyutsa urubanza rwasibwe n'impamvu yatuma uregwa asubirishamo urubanza rwaciriwe adahari, izi manza zombi zitandukaniye kuri kamere yazo kuko rumwe ari urubanza rw' imbonezamubano urundi rukaba urubanza rw'inshinjabyaha zirengera inyungu zibungwabungwa zitandukanye, bikaba binatandukaniye no ku miterere y'ibirego byari byatanzwe kuko rumwe rurebana no kubyutsa urubanza urundi akaba ari uwo gusubirashamo urubanza.

[17] Rusanga mu rubanza rw'inshinjabyaha rwa Rutayisire Protogène kuba ataragaragarije urukiko vuba bishoboka impamvu atari bushobore kuzitabira iburanisha cyangwa yatumye ataryitabira, bitafatwa nko kuba ataragize umwete wo gukurukirana urubanza rwe nk'uko byemejwe mu rubanza rw'imbonezamubono rwaciwe n'Urukiko Rw'Ikirenga rwavuzwe kubera mu manza z'inshinjabyaha icyo uregwa ushaka gusubirishamo urubanza asabwa ari ukugaragaza impamvu atitabiriye iburanisha mu mwanzuro we mu gihe atanga akirego nk'uko biteganywa n'amategeko. Bityo rero akaba nta kindi gihe kitari iki agomba kuba yagaragarijemo iyo mpamvu ikomeye. Ku by'ibyo, ikirego gisaba gusubirishamo urubanza cya Rutayisire Protogène kikaba cyaragombaga kwakirwa kuko ibisabwa kugira ngo ugusubirishamo urubanza kwakirwe yari yabigaragaje kandi nta nenge urukiko rwemeje yari ibirimo uretse kuvuga gusa ko byagaragajwe nyuma y'igihe kinini nyamara byaragaragajwe mu buryo no mu bihe itegeko riteganya.

[18] Rusanga hashingiwe ku ngingo ya 193 y'itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha[3] urubanza RP/GEN 00037/2023/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga rwaciwe kuwa 19/04/2024 rugomba guteshwa agaciro, Urukiko Rwisumbuye rwa Muhanga rukaburanisha ikirego cyo gusubirishamo urubanza cyatanzwe na RUTAYISIRE Protogène mu mizi.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko ubujurire bwa Rutayisire Protogène bufite ishingiro;

[20] Rwemeje ko urubanza RP/GEN 00037/2023/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 19/04/2024 ku kirego cyo gusubirishamo urubanza RP/GEN 00024/2022/TGI/MHG rwaciwe kuwa 23/11/2023 ruteshejwe agaciro;

[21] Rutegetse ko uru rubanza rwohererezwa Urukiko Rwisumbuye rwa Muhanga kugira ngo ruruburanishe mu mizi.

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[2] Ibika kuva ku cya [28] kugeza ku cya [30] by'urubanza RS/INJUST/RCOM 00009/2022/SC.

[3] "iyo urukiko rwajuririwe rusanze urubanza rwari rwaregewe mu buryo bukurikije amategeko urukiko rwaruciye ku rwego rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, Urukiko rwajuririwe rurarwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere; rukarutesha agaciro maze rukarusubiza urukiko rwari rwaruciye kugira ngo ruruburanishe mu mizi, nta yindi ngwate y'amagarama itanzwe"