

## NDIZIHIWE N'UNDI v. MUDAKEMWA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA– RCAA 0136/11/CS (Rugege, P.J., Mugenzi na Munyangeri N., J.) 14 Gashyantare 2014]

*Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ubujurire – Kureka ikirego cy'ubujurire ku cyemezo cy'ibanzirizasuzuma – Uwajuriye afite uburenganzira bwo kureka ubujurire bwe n'iyu uwarezwe atabyemera – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 26.*

*Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Indishyi ku gihombo gitewe n'ikirego cy'ubujurire kiretse n'umuburanyi – Uwarezwe mu bujurire afite uburenganzira ku ndishyi z'ibyo yatanze kubera ubujurire yari yarezwemo n'uwaje kubureka – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.*

**Incamate y'ikibazo:** Ndizihiwe na Nyirabihogo bamaze kubona ko ubujurire bwabo butakiriwe kubera ko umucamanza w'ibanzirizasuzuma mu Rukiko rw'Ikirenga yasanze bwaratanzwe bukererewe, bujuririyeye icyo cyemezo ariko nyuma bandikira Urukiko bavugaga ko baretse ubwo bujurire. Mudakemwa na bagenzi be baregwaga mu bujurire bemera ko kureka ubujurire ari uburenganzira bw'umuburanyi, ariko bakavugaga ko bitababuzaga guhabwa indishyi zishingiye ku gihombo batewe no gukurikirana urwo rubanza no guhamba Avoka.

**Incamate y'icyemezo:** 1. Nta cyatumauwatanze ikirego atemererwa kukireka, mu gihe abikoze mu nzira zemewe n'amategeko, kabone n'iyu uwo baburana atabyemera, kuko ari uburenganzira yemererwa n'itegeko.

2. Indishyi zisabwa n'abaregwa mu bujurire ntizishingiye ku kiburanwa ahubwo zishingiye ku gihombo batewe n'ibyo batanze kubera ubujurire bari barezwemo, uwari wajuriye akaza kubureka. Bakwiriyeye kuzihabwa bitabaye ngombwa ko bajya gutangiza urundi rubanza kuri izo ndishyi.

**Abajuriye bemerewe kureka ubujurire.  
Abaregwa bahawe indishyiz'igihe mbo cy'avokan'ikurikirana rubanza.  
Amagarama y'urubanza aherereye ku bajuriye.**

**Amategeko yashingiweho:**

Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 26.

Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

**Nta manza zashingiweho.**

**Urubanza**

**I. IMITERERE Y'URUBANZA:**

[1] Nyuma y'uko Ndizihiwe na Nyirabihogo bajuririye mu Rukiko rw'Ikirenga urubanza RCA188/10/HC/MUS rwaciwe n'Urukiko Rukuru, haburanwa izungura ry'umutungo wasizwe na Rusigariye, umucamanza w'ibanzirizasuzuma yemeje, ku wa 11/11/2011, ko ubwo bujuriye butakiriwe kuko bwatanzwe bukerewe.

[2] Ndizihiwe na Nyirabihogo bajuririye icyo cyemezo cy'ibanzirizasuzuma, ariko nyuma, mu ibaruwa yabo yo kuwa 04/12/2013, bamenyesha Urukiko ko baretse ubujuriye, bashingiye ku ngingo ya 26 y'itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanzaz'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu.

[3] Abaregwa mu bujuriye, aribo Mudakemwa, Mukarutura na Nyiransekanabo bo bavugaga ko batemera ko abajuriye bareka ikirego, mu gihe nabo bari baratanze ubujuriye bwuririye ku bundi kuwa 10/10/2013 basaba indishyi z'igihembo cya avoka n'ikurikirana rubanza.

[4] Urubanza rwaburanishijwe mu ruhame ku wa 14/01/2014, abaregwa mu bujuriye bahagarariwe na Me Habyarimana Christine naho abaregwa bahagarariwe na Me Uwimana Shani.

## **II. IBIBAZO BIGIZEURUBANZA N'ISESENGURWA RYABYO**

[5] Muri uru rubanza harasuzumwa ikibazo cyo kumenya niba ukureka ikirego kw'abajuriye kwakwemerwa, nyuma habe hanasuzumwa niba ubujuriye bwuririye ku bundi bwatanzwe n'uregwa mbere y'uko uwajuriye areka ikirego, bwakwakirwa mu gihe ukureka ikirego kwakwemerwa.

### **Ku bijyanye n'iyemerwa ry'ukureka ikirego.**

[6] Uburanira abajuriye avugaga ko bahisemo kureka ikirego bashingiye ku ngingo ya 26 y'itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, akaba asanga bakwiye kubemererwa nta kindi basabwe, kuko itegeko rivugaga ko bitari ngombwa ko uwo baburana abyemera. Uburanira abaregwa nawe yemera ko ukwemererwa kureka ikirego ari uburenganzira bw'uwagitanze, ariko ko bitabuzwa abaregwa kugira indishyi basaba.

[7] Ingingo ya 26 y'itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, iteganyaga ko kureka ikirego ari ukwiyambura ububasha n'uburenganzira umuntu yari afite bwo gukomeza gukurikirana ikirego cye, ukwemera kw'undi muburanyi kukaba atari ngombwa.

[8] Urukiko rurasanga, hashingiye kuri icyo ngingo y'itegeko, nta cyatuma uwatanze ikirego atemererwa kukureka, mu gihe abikoze mu nzira zemewe n'amategeko, kabone n'icyo uwo baburana atabyemera, kuko ari uburenganzira yemererwa n'itegeko, bityo rero Ndizihiwe na Nyirabihogo bakababemerewe kureka ubujuriye bwabo.

### **Ku bijyanye n'indishyi zisabwa n'abaregwaga.**

[9] Me Habyarimana uburanira Ndizihiwe na Nyirabihogo avugaga ko ukureka ikirego nk'uko biteganywaga n'ingingo ya 26 y'itegeko ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu bitagomba ko undi muburanyi abyemera.

[10] Avuga ko n'ubujurire bwuririye ku bundi bwatanzwe n'abo baburana butabuza ko ukureka ikirego kwemerwa, kuko ubwo bujuriye ari ubushamikiye ku kirego cy'ibanze, mu gihe rero ba nyiracyo bakiretse ubwo bujuriye butaba bugisuzumwe, ndetse ingingo ya 167 y'itegeko rishya ryerekeye imburanishirize y'ibanze z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ikaba isobanura, mu gika cyayo cya gatatu, ko iyo ubujurire bw'ibanze butakiriye, ubujurire bubwuririyeho nabwo budashobora kwakirwa.

[11] Asobanura ko niba abo baburana bashaka kwishyura indishyi bifuzaga kwaka, batanga ikirego cy'ibanze bashingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano bagaragaza ibyo baba barangirijwe ku makosa ya Ndizihiwe na Nyirabihogo.

[12] Me Uwimana Shani uburanira Mudakemwa, Mukarutura na Nyiransekanabo baregwaga mu bujuriye we avuga ko n'ubwo ingingo ya 26 ivuga ko ukwemera kw'undi muburanyi bitari ngombwa kugira ngo ushaka kureka ikirego abyemererwe n'Urukiko, hadakwiye kwirengagizwa igihombo uwaregwaga aba yaratejwe mu gukurikirana urubanza no guhamba avoka, anavuga ko muri uru Rukiko hari imanza zaciwe zikagenye indishyi z'igihombo nk'icyo.

[13] Asobanura ko abo aburanira bashyizeho avoka abakorera imyanzuro yo kwiregura, bamuhamba 1.000.000 frw, hatabariwemo ibyo batanze ku ikurikiranarubanza, kuko baje ku Rukiko rw'Ikirenga incuro zigera kuri eshatu baturuka ku Gisenyi, ari yo mpamvu basaba ko bakwishyurwa 2.500.000 frw, akubiyemo igihombo cya avoka n'ikurikiranarubanza, cyane ko abaretse ikirego babikoze nyuma y'uko abo baburana batanze imyanzuro yabo.

[14] Ku kibazo cyo kuba abaregwaga mu bujuriye bashobora gutangiza ikirego kigamije kwaka indishyi z'ibyo batanze mu guhamba avoka no gukurikirana urubanza, Me Uwimana avuga ko byaba ari ukubarushya no kwirengagiza ko bamaze igihe kirekire basiragira.

[15] Urukiko rurasanga, hakurikijwe ibisobanuro by'abaregwaga mu bujuriye nk'uko byagaragajwe haruguru, indishyi basaba atari izishingiye ku cyaburanwaga, ahubwo ari izijyanye gusa n'ibyo batanze bitewe n'ubujurire bari barezwemo (*costs*) bikaba byumvikana ko, hakurikijwe ibiteganywa n'ingingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'Amategeko Mbonezamubano, byabateje igihombo giturutse kuri icyo kirego cy'ubujurire, bakaba rero bakwiye kwishyurwa ibyo batanze muri urwo rwego, bitabaye ngombwa ko bajya gutangiza urubanza kuri izo ndishyi.

[16] Ku bijyanye n'urugero rw'indishyi basaba, Urukiko rurasanga, nta bimenyetso byakwiringirwa bagaragaje byerekana ko amafaranga 2.500.000 ari yo batanze koko ku gihombo cya avoka n'ikurikirana urubanza, bakaba rero bagenerwa, mu bushishozi bw'Urukiko, 500.000 frw y'igihombo cya avoka bose, na 200.000 frw buri wese y'ikurikiranarubanza, yose hamwe akaba 1.100.000 frw.

### **III. ICYEMEZO CY'URUKIKO**

[17] Rwemeye ukureka ubujurire kwa Ndizihiwe na Nyirabihogo;

[18] Rubategetse kwishyura Mudakemwa, Mukarutura na Nyiransekanabo indishyi z'ibyo batanze biturutse kuri ubwo bujire, zihwanye na 1.100.000 frw, akubiyemo 500.000 frw y'igihembo cya avoka, na 600.000 y'ikurikiranarubanza.

[19] Rubategetse kwishyura buri wese icya  $\frac{1}{2}$  cy'amagarama y'uru rubanza, ahwanye na 48.250 frw, ni ukuvuga 24.125 frw buri wese.