ITORERO UMWUNGERI MWIZA v. NDIMUKAGA

[Rwanda URUKIKO RW'IKIRENGA – RADAA00005/2017/SC (Kayitesi Z., P.J., Cyanzayire na Kayitesi R. J.) 14 Kamena 2019]

Amategeko yerekeye kwimura abantu ku mpamvu z'inyungu rusange – Kwimura abantu ku mpamvu z'inyungu rusange – Igihe ibikorwa byo kwimura abantu bititwa ko byabaye mu nyungu rusange – Ibikorwa bigamije inyungu z'abantu ku giti cyabo ku buryo bw'umwihariko ntibishobora na rimwe kwitwa ko bigamije inyungu rusange – Itegeko N° 18/2007 ryo ku wa 19/04/2007, ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, ingingo ya 6 niya 10 - 16.

Incamake y'ikibazo: Uru rubanza rukomoka ku isambu itorero Umwungeri mwiza rivuga ko ryayihawe n'akarere ka Gasabo mu rwego rwo kwimura abantu kubera inyungu rusange ariko na Ndimukaga akavuga ko iyo sambu ariye iryo torero ryigabije.

Ndimukaga yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge avuga ko umutungo we wose wigabijwe n' itorero Umwungeri mwiza ndetse asaba guhabwa inyungu n'indishyi zinyuranye; uru rukiko rwemeje ko ikirego cye gifite ishingiro ariko ko kuba atagaragaza ingano y'ibyari muri iyo sambu agenewe indishyi mu bushishozi bw'ururkiko.

Itorero Umwungeri mwiza ryajuririye urukiko rukuru rivuga ko urukiko rubanza rwaciye urubanza rudafitiye ububasha; maze urukiko rukuru rwemeza ko urukiko rwisumbuye rwa nyarugenege rwaciye urubanza rutari mu bubasha bwarwo, rutegeka ko urubanza rwajuririwe ruvuyeho, ikirego kigomba gushyikirizwa urugereko rwihariye rw'urwo rukiko ruburanisha imanza z'ubutegetsi.

Urwo rugereko rwagobokesheje akarere ka gasabo, maze ruca urubanza rwemeza ko ikirego cya Ndimukaga kidafite ishingiro, rumutegeka kwishyura indishyi zinyuranye.

Ndimukaga yajuririye Urukiko Rukuru avuga ko urukiko rwirengagije ko isambuye ifitwe ni itorero Umwungeri mwiza ko kandi atahawe ingurane nkuko abandi bayihawe, urukiko rwemeza ko ubujurire bwe bufite ishingiro kuri bimwe ko kandi ubutaka buburanwa Ndimukaga akoresha buguma mu maboko ye, rutegeka itorero Umwungeri mwiza guha Ndimukaga na Akarere ka Gasabo indishyi zinyuranye.

Itorero Umwungeri mwiza ryajuririye Urukiko rw'Ikirenga rivuga ko Ndimukaga atari akwiye ingurane mu gihe atigeze agaragaza ikimenyetso cy'uko yari afite ibikorwa mu isambu iburanwa; ko Urukiko rwirengagije ko hari imanza zabaye itegeko zemeje ko habayeho kwimura abaturage ku nyungu rusange ko kandi nta kimenyetso yatanze kigaragaza ko umutungo uburanwa ari uwe, kuko yabanje kuvuga ko isambu ari iy'umuryango, bikaza kurangira avuga ko ari iye, ndetse ko Urukiko rwamweguriye isambu kandi yari yaregeye guhabwa ingurane.

Ndimukaga yiregura avuga ko abajuriye batagaragariza urukiko uburyo haba harabayeho kwimura abantu ku nyungu rusange ahaburanywa ariko ntihatangwe ingurane ikwiye, kuko n'abaturage bemeje ko ntayatanzwe. Akomeza avuga ko nta manza zabaye itegeko zemeje ko habayeho kwimura abantu mu nyungu rusange nk'uko ababuranira itorero umwungeri mwiza babivuga, ko ahubwo Inkiko ziyambuye ububasha zidasuzumye ibimenyetso by'ababuranyi. Kubijyanye no kuba nta kimenyetso yatanze kigaragaza ko umutungo uburanwa ari uwe, avuga

ko ababuranira itorero Umwungeri mwiza batakagombye gukomeza kuvuga ko isambu iburanywa ari iyu muryango, kuko ku rwego rwa mbere babitanzemo inzitizi maze urukiko rwemeza ko nta shingiro bifite; naho kubijyanye no kuba ntacyo urukiko rwashingiyeho rugenera ndimukanza isambu iburana, avuga ko urukiko rwashingiye ku inyandiko akarere ka gasabo kandikiye itorero Umwungeri mwiza karisaba kwishyura abaturage, ndetse no ku byavuzwe n'uwaburaniye akarere wemeje ko icyo gikorwa cyo kwimura abantu ntakigeze kibaho. Asoza basaba ko isambu iburanwa yaguma mu muaboko ya Ndimukaga cyane ko ntagikorwa na kimwe bayikoreyeho.

Akarere ka Gasabo kavuga ko hari ibigomba gukurikizwa mu kwimura abantu mu nyungu rusange bikaba atari byo byakozwe, ko habaye ubwumvikane hagati y'itorero umwungeri mwiza n'umuturage ufite ubutaka, bityo rero kakaba kemeza ko nta gikorwa cyo kwimura abantu kubera inyungu rusange cyabayeho.

Ndimukaga yatanze ubujurire bwuririye ku bundi asaba uwajuriye ko yategekwa kumuha indishyi z'akababaro n'ikurikiranarubanza hamwe n'igihembo cy'avoka; Akarere nako katanze ikirego kiregera kwiregura asaba guhabwa n'uwajuriye indishyi zo gushorwa mu manza ku maherere hamwe n'igihembo cy'avoka.

Itorero umwungeri mwiza ryigura kuri iyo ngingo y'indishyi zisabwa rivuga ko ritigeze Akarere, kandi ko ari ko gakwiye gukiranura abaturage. Naho ku birebana Ndimukaga rivuga ko yatanze icyemezo cy'ukutishobora, ko atashobora kwishyura Avoka, bivuze ko hari uburyo yamugenewe, bityorero indishyi asaba akaba atazikwiye.

Incamake y'icyemezo: 1. Ibikorwa bigamije inyungu z'abantu ku giti cyabo ku buryo bw'umwihariko ntibishobora na rimwe kwitwa ko bigamije inyungu rusange; hashingiwe ku nyandiko zigaragara muri dosiye, urukiko rusanga nta gikorwa cyo kwimura abantu kubera inyungu rusange cyabayeho ahubwo icyabaye ari ubwimvikane bwabaye hagati y'itorero umushumba mwiza nabo ryaguriraga imitungo yabo kandi Ndimukaga ntagaragara ku rutonde rwabishyuwe bityo rero iyo sambu iburanwa igomba kuguma mu maboko ya Ndimukaga.

2. Indishyi zisabwa n'ababuranyi zigenwa mu bushishozi bw'urukiko iyo zifite ishingiro naho kubijyanye n'indishyi zo gushorwa mu manza nta mpamvu Akarere ka kaba katazihabwa, kuko kukagobokesha mu rubanza bitari bigamije kugatesha umwanya, ahubwo byari bigamije gufasha imigendekere myiza y'urubanza.

Ubujurire nta shingiro bufite.
Ingwate y'amagarama yatanzwe n'uwajuriye ihwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko N° 18/2007 ryo ku wa 19/04/2007, ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, ingingo ya 6 niya 10 – 16.

Nta manza zashingiweho.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Intandaro y'uru rubanza ni isambu ingana na hegitari imwe n'igice, iherereye mu Mudugudu wa Marembo, Akagali ka Nyabisindu, Umurenge wa Remera, Akarere ka Gasabo. Ndimukaga François avuga ko aho aviriye muri Gereza, yasanze iyo sambu ifitwe n'ITORERO UMWUNGERI MWIZA, rivuga ko ryayihawe n'Akarere ka Gasabo mu rwego rwo kwimura abantu kubera inyungu rusange (expropriation pour cause d'utilité publique), ariko nta ngurane ahawe.

[2] Ndimukaga François yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, avuga ko icyo aregera ari umutungo we wose wigabijwe n'ITORERO UMWUNGERI MWIZA, ugizwe n'isambu n'ibyarimo byose byaranduwe, bihwanye na 8.339.690 Frw, inyungu n'indishyi zinyuranye. Ku wa 07/03/2014, urwo Rukiko rwaciye urubanza N° RC 0719/13/TGI/NYGE, rwemeza ko ikirego gifite ishingiro, ko Ndimukaga François agomba kwishyurwa, ariko kuba nta kigaragaza ingano z'ibyari muri iyo sambu ye, rwemeza ko agomba guhabwa indishyi zigenwe mu bushishozi bw'Urukiko zingana na 20.000.000 Frw.

[3] ITORERO UMWUNGERI MWIZA ryajuririye Urukiko Rukuru, rivuga ko Urukiko Rwisumbuye rwaciye urubanza rudafitiye ububasha. Ku wa 16/12/2014, Urukiko Rukuru rwaciye urubanza N° RCA 0165/14/HC/KIG, rwemeza ko Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza rutari mu bubasha bwarwo, rutegeka ko urubanza rwajuririwe ruvuyeho, ko ikirego kigomba gushyikirizwa Urugereko rwihariye rw'urwo Rukiko ruburanisha imanza z'ubutegetsi.

[4] Urubanza rwashyikirijwe Urugereko rwihariye ruburanisha imanza z'ubutegetsi, Akarere ka Gasabo karugobokeshwamo. Ku wa 30/10/2015, urwo Rukiko rwaciye urubanza N^{0}RAD 0049/15/TGI/NYGE, rwemeza ko ikirego cya Ndimukaga François kidafite ishingiro, rumutegeka guha ITORERO UMWUNGERI MWIZA n'Akarere ka Gasabo indishyi zingana na 600.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka buri wese.

[5] Ndimukaga François yajuririye Urukiko Rukuru, avuga ko hirengagijwe ko isambu ye ifitwe n'ITORERO UMWUNGERI MWIZA, akaba yaragombaga wishyurwa agaciro k'ubutaka n'ibihingwa byarimo nk'uko abandi bishyuwe. Ku wa 11/04/2017, urwo Rukiko rwaciye urubanza N°RADA 0079/15/HC/KIG, rwemeza ko ubujurire bwe bufite ishingiro kuri bimwe, rutegeka ko ubutaka buburanwa, bukoreshwa na Ndimukaga François, buguma mu maboko ye kuko ari ubwe, rutegeka ITORERO UMWUNGERI MWIZA kumuha 750.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, kandi izo ndishyi rikaziha n'Akarere ka Gasabo. Urukiko Rukuru rwasobanuye ko rutashingira ku bimenyetso byatanzwe ngo rwemeze ko habayeho igikorwa cyo kwimura abantu ku mpamvu z'inyungu rusange (Expropriation pour cause d'utilité publique) bikozwe n'Akarere ka Gasabo, ku mutungo wa Ndimukaga François.

[6] ITORERO UMWUNGERI MWIZA ryajuririye Urukiko rw'Ikirenga, rivuga ko Ndimukaga François atari akwiye ingurane mu gihe atigeze agaragaza ikimenyetso cy'uko yari afite ibikorwa mu isambu iburanwa; ko Urukiko rwirengagije ko hari imanza zabaye itegeko (urubanza N°RC 0626/10/TB/KCY n'urubanza N°RCA 0165/14/HC/KIG), zemeje ko habayeho kwimura abaturage ku nyungu rusange. Rivuga kandi ko nta kimenyetso Ndimukaga François yatanze kigaragaza ko umutungo uburanwa ari uwe, kuko yabanje kuvuga ko isambu ari

iy'umuryango, bikaza kurangira avuga ko ari iye. Rivuga ko indi mpamvu yatumye rijurira ari uko Urukiko rwamweguriye isambu kandi yari yaregeye guhabwa ingurane.

[7] Iburanisha ry'uru rubanza ryashyizwe ku wa 10/04/2018, uwo munsi haburanwa ku nzitizi yatanzwe na Ndimukaga François yarebanaga n'iburabubasha bw'Urukiko rw'Ikirenga. Ku wa 11/05/2018, Urukiko rwemeje ko inzitizi yatanzwe na Ndimukaga François idafite ishingiro, ko ubujurire bw'ITORERO UMWUNGERI MWIZA buri mu bubasha bw'Urukiko rw'Ikirenga. Iburanisha ry'urubanza ryakomeje ku wa 06/06/2018, ariko uwo munsi ntirwaburanishwa kubera impinduka mu rwego rw'amategeko, rwongera kuburanishwa mu ruhame ku wa 12/11/2018. Urukiko rwemeje ko urubanza ruzasomwa ku wa 25/01/2019.

[8] Isomwa ry'urubanza ryagiye ryimurwa kubera impamvu zinyuranye, biba ngombwa ko hashyirwaho inteko nshya, iburanisha ry'urubanza ryongera gupfundurwa ku wa 23/04/2019. Kuri iyi tariki, iburanisha ryabereye mu ruhame Ndimukaga François yitabye yunganiwe na Me Mukiza Bizimana Silas, ITORERO UMWUNGERI MWIZA riburanirwa na Me Idahemuka Tharcisse afatanyije na Me Karangwa Vincent. Urukiko rwamenyesheje ababuranyi ko urubanza ruzasomwa ku wa 14/06/2019.

[9] Abahagarariye ITORERO UMWUNGERI MWIZA bemeza ko ryahawe isambu iburanwa n'Akarere ka Gasabo, nyuma y'uko kimuye abantu ku mpamvu z'inyungu rusange. Ndimukaga François, kimwe n'uhagarariye Akarere ka Gasabo, bo bavuga ko nta gikorwa cyo kwimura abantu ku mpamvu z'inyungu rusange cyakozwe n'Akarere ku isambu iburanwa.

[10] Muri uru rubanza, ikibazo nyamukuru cyasuzumwe, akaba ari ukumenya niba Akarere ka Gasabo karimuye Ndimukaga François ku mpamvu z'inyungu rusange, nyuma kagaha isambu iburanwa ITORERO UMWUNGERI MWIZA.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

➢ Kumenya niba Akarere ka Gasabo karimuye Ndimukaga François ku mpamvu z'inyungu rusange, kagaha ITORERO UMWUNGERI MWIZA isambu iburanwa.

[11] Me Karangwa Vincent na Me Idahemuka Tharcisse baburanira ITORERO UMWUNGERI MWIZA, bavuga ko ryahawe ubutaka buburanwa nyuma yo kwimuraho abantu mu nyungu rusange, bakabishingira ku mabaruwa yagiye yandikwa n'Ubuyobozi bw'Akarere ka Gasabo, no kuri raporo z'abari abayobozi b'inzego z'ibanze. Babishingira kandi ku manza[1] bavuga ko zabaye itegeko zikemeza ko habaye kwimura abaturage ku mpamvu z'inyungu rusange, no ku kuba uwo baburanira yarahawe icyemezo cyo kubaka. Basobanura ko inyandiko zose zerekana ko Akarere ariko katanze icyo kibanza, kugira ngo hubakwe amashuri n'amavuriro; kuba Akarere katarubahirije imihango yose ijyanye no kwimura abantu ku mpamvu z'inyungu rusange bikaba bitabazwa ITORERO UMWUNGERI MWIZA.

[12] Me Karangwa Vincent na Me Idahemuka Tharcisse bavuga ko ibyari bigamijwe mu kwimura abantu barimo na Ndimukaga François byakozwe, uretse ko bitashyizwe mu isambu

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[1] Urubanza N°RC0626/10/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru ku wa 31/05/2011, n'urubanza N° RCA 0165/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 16/12/2014

yose, n’ahaburanwa hakaba hatarimo ibikorwa. Bavuga ko abimuwe bahawe ingurane, hakaba hari inyandiko igaragaza ibarura ry’abagombaga kwishyurwa yakozwe hari abayobozi barimo uwari “Assistant Bourgmestre“ wa Komini Kacyiru, n’abandi bayobozi bahagarikiye igikorwa cy’ibarura ry’abaturage. Bavuga kandi ko ku rutonde rw’abahawe ingurane hariho Nyirabukara Bernadette, mushiki wa Ndimukaga François, wayihawe mu izina ry’umuryango wose.

[13] Basobanura ko ahaburanwa hari ah’umuryango wa Bakunda Paul, bikagaragazwa na raporo yo ku wa 12/10/2012 yakozwe n’Ubuyobozi bw’Umurenge wa Remera nyuma yo gusuzuma ikibazo cy’ITORERO UMWUNGERI MWIZA na Ndimukaga François, aho uyu yavugaga ko bagurishije isambu y’umuryango. Bavuga ko nta kigaragaza ko Ndimukaga François yari afite ubutaka n’ibikorwa ahaburanwa, kuko hari kwa mukase, akaba atarashoboraga kuhabona umunani. Bongeraho ko umugore wa Ndimukaga François yari atuye aho, ku buryo iyo isambu yabo iza gufatwa yari gutanga ikibazo. Bongeraho ko Urukiko Rukuru rwaburanishije ku kitari cyaregewe, kuko hari haregewe gusaba ingurane, Urukiko rugacira urubanza ku butaka.

[14] Me MUKIZA BIZIMANA Silas wunganira Ndimukaga François, avuga ko abarega batagaragariza Urukiko uburyo haba harabayeho kwimura mu nyungu rusange ahaburanwa, ariko ntihatangwe ingurane ikwiye, kuko n’abaturage bemeje ko ntayatanzwe. Asobanura ko nta manza zabaye itegeko zemeje ko habayeho kwimura abantu mu nyungu rusange nk’uko ababuranira ITORERO UMWUNGERI MWIZA babivuga, ko ahubwo Inkiko ziyambuye ububasha zidasuzumye ibimenyetso by’ababuranyi, ko rero igikorwa cyo kwimura abantu kitareba Ndimukaga François, kuko cyabaye adahari kandi nta n’uwo yahaye ububasha bwo kubimukorera.

[15] Ku birebana n’ibivugwa n’ababuranira ITORERO UMWUNGERI MWIZA ko ntacyo Urukiko rwashingiyeho rugenera Ndimukaga François isambu, avuga ko Urukiko rwashingiye ku nyandiko Akarere ka Gasabo kandikiraga ITORERO UMWUNGERI MWIZA karisaba kwishyura abaturage, gashingira kandi ku byavuzwe n’uwaburaniye Akarere wemeje ko katigeze kimura abantu mu nyungu rusange, no kuba ibiteganywa n’amategeko mu kwimura abantu ku mpamvu z’inyungu rusange bitarigeze byubahirizwa. Avuga kandi ko iyo Akarere kimura abantu, ari ko kari kwishyura ingurane ikwiye.

[16] Akomeza avuga ko ababuranira ITORERO UMWUNGERI MWIZA batagombye gukomeza kuvuga ko isambu iburanwa ari iy’umuryango, kuko ku rwego rwa mbere babitanzemo inzitizi, Urukiko rwemeza ko nta shingiro ifite, kuko Ndimukaga François yari afite umunani yahawe na se, cyane ko nta n’umwe wo mu muryango umurega, kandi n’ubu iyo sambu akaba ariwe uyikoresha nk’uko Urukiko Rukuru rwabyemeje nyuma yo kugera ku kiburanwa. Basaba ko yagumana isambu ye, cyane cyane ko nta gikorwa na kimwe bayikoreyeho. Yongeraho ko Ndimukaga François yareze atari uko isambu ye bayitwaye, ahubwo yabitewe n’uko yasanze harabaye itambamira ku butaka bwe, bukaba bwanditswe ko buri mu makimbirane.

[17] Me Rushikama Niyo Justin uburanira Akarere ka Gasabo avuga ko hari ibigomba gukurikizwa mu kwimura abantu mu nyungu rusange bikaba atari byo byakozwe, ko habaye ubwumvikane hagati y’ITORERO UMWUNGERI MWIZA n’umuturage ufite ubutaka. Ku byasobanuwe n’ababuranira ITORERO UMWUNGERI MWIZA ko Akarere ari ko kimuye

abantu ku mpamvu z’uko hari abahagarariye ubuyobozi muri icyo gikorwa, avuga ko Ubuyobozi bw’Ibanze aribwo bwari buhari, bukurikirana igikorwa cyo kumvikana, ariko ko butakoze "expropriation". Avuga ko n‘urutonde rwakozwe atari raporo y‘Akarere, ahubwo ari inyandiko yanditswe n’intoki (manuscrit) igaragaza abagomba kwishyurwa. Yongeraho ko uwitwa Nzabahimana Augustin Neto atagaragara nk’uhagarariye Akarere, ko yari ahari nk’umuturage waho, dore ko batananditse umurimo yari afite mu Karere ngo ubanzirize izina rye, ndetse akaba nta na “logo“ y’Akarere cyangwa “cachet“ biri kuri iyo nyandiko.

[18] Akomeza avuga ko nyuma havutse ikibazo cy’abaturage batishyuwe bagera kuri bane, barimo Nyirabukara Bernadette, Habimana Noel, Ndimukaga François na Nyiramatama Athanasie, nk’uko bigaragazwa na raporo yo ku wa 12/5/2010, bikaba byaratumye Umurenge wa Remera utumiza ITORERO UMWUNGERI MWIZA, Ubuyobozi bwawo bufata icyemezo ko rigomba kwishyura ubutaka bw‘abaturage rifite bavuga ko batishyuwe ndetse n’ibikorwa byarimo. Avuga ko ibyo bishimangirwa n’ibaruwa yo ku wa 12/12/2012 Ubuyobozi bw‘Akarere bwandikiye Umuvugizi w’ITORERO UMWUNGERI MWIZA, buhereye kuri raporo y’Umurenge, no kw’ibaruwa Umuvugizi w’Itorero yanditse ku wa 21/2/2010 yemera ko hari abatarishyuwe barimo Nyirabukara Bernadette. Avuga ko ibyo kuba Nyirabukara yarishyuwe iby’umuryango ntacyo Akarere kabiziho, kimwe no kumenya niba ahaburanwa ari aha Ndimukaga François, ko icyo kemeza ari uko nta kwimura abantu mu nyungu rusange byabaye.

UKO URUKIKO RUBIBONA

[19] Itegeko N°18/2007 ryo ku wa 19/04/2007, ryerekeye kwimura abantu ku mpamvu z’inyungu rusange ryakoreshwaga igihe ikibazo kivugwa muri uru rubanza cyavukaga, mu ngingo zaryo kuva ku ya 11 kugeza ku ya 16, ryasobanuraga imihango yagombaga gukurikizwa mu byerekeye kwimura abantu kubera inyungu rusange. Ku bijyanye n’urwego rufite ububasha bwo kwemeza ko abantu bimurwa, ryateganyaga mu ngingo yaryo ya 10,1° ko iyo imirimo yo kwimura ireba Akarere kamwe bikorwa na Komite Nyobozi ku rwego rw’Akarere, ishingiye ku cyemezo cya Komisiyo ishinzwe iby’ubutaka ku rwego rw’Akarere.

[20] Ku bijyanye n’uru rubanza, Urukiko rurasanga inyandiko zatanzwe muri dosiye[2] zigaragaza ko imihango yateganywaga n’Itegeko rimaze kuvugwa atariyo yakoreshejwe mu kwimura abantu aho ITORERO UMWUNGERI MWIZA ryashyize cyangwa ryateganyaga gushyira ibikorwa byaryo, ndetse ntizinagaragaza ko inzego zivugwa mu ngingo ya 10,1° yavuzwe haruguru arizo zabigizemo uruhare, bivuga ko hatabaye igikorwa cyo kwimura abantu mu nyungu rusange gikozwe n’Akarere.

[21] Ikigaragara muri izo nyandiko, ni uko habaye kubarura ibikorwa by’abaturage ahagombaga kubakwa amashuri, ivuriro n’inzu y’amahugurwa, hari abari mu nzego z’ubuyobozi z’ibanze n’abahagarariye ITORERO UMWUNGERI MWIZA, rikaba ariryo ryishyura

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[2] – Ibaruwa yo ku wa 25/04/2011 Umuyobozi w’Akarere ka Gasabo yandikiye Umushumba w’itorero Umwungeri Mwiza, ivuga ku kibazo cy’abaturage Itorero ritishyuye ubutaka n’imitungo yabo;
- Inyandiko yiswe ibarura ry’ibikorwa biri mu masambu y’abaturage muri Cellule Nyabisindu ahazubakwa amashuri, ivuriro n’inzu y’amahugurwa;
- Raporo yakozwe n’Umunyamabanga Nshingwabikorwa w’Umurenge wa Remera ku wa 12/02/2010 ku kibazo cy’Itorero rya « Bon Berger »na bamwe mu baturage bavugaga ko batishyuwe

ibyabaruwe nyuma yo kubyumvikanaho n'abaturage; ibyo bikaba bihuje n'ibiteganywa n'ingingo ya 6 y'Itegeko N°18/2007 ryo ku wa 19/04/2007, ryavuzwe haruguru. Iyo ngingo igira iti: "Ibikorwa bigamije inyungu z'abantu ku giti cyabo ku buryo bw'umwihariko ntibishobora na rimwe kwitwa ko bigamije inyungu rusange. Iyo bibaye ngombwa, nyir'ibyo bikorwa abanza kubyumvikanaho n'ushobora kwimurwa akamuha ikiguzi bumvikanyeho bashingiye ku mategeko abigenga kandi bikorewe imbere y'ubuyobozi bubifitiye ububasha. Iyo bigaragaye ko iyo mirimo y'abantu ku giti cyabo ifitiye inyungu abantu benshi n'Igihugu muri rusange, iyo mirimo ifatwa nk'iy'inyungu rusange, ariko ba nyir'iyo mirimo nibo bishyura amafaranga y'igikorwa cy'ibarura ry'umutungo w'uwimurwa n'ay'indishyi ikwiye".

[22] Urukiko rurasanga muri uko kubarurira abaturage no kumvikana nabo ku gaciro k'umutungo wabo, nta kigaragaza ko ITORERO UMWUNGERI MWIZA ryaba ryarumvikanye na Ndimukaga François, ngo ribe ryaramwishyuye amafaranga y'ibyo yabaruriwe, cyane ko atagaragara ku rutonde rw'ababaruriwe bakishyurwa rwashyikirijwe Urukiko. Kuba Ndimukaga François atarishyuwe binagaragazwa n'ibaruwa yo ku wa 24/12/2012, Ubuyobozi bw'Akarere bwandikiye ITORERO UMWUNGERI MWIZA, bushingiye kuri raporo y'Umurenge wa Remera yo ku wa 12/2/2010, burisaba kwishyura abaturage bagaragaje ko batishyuwe, barimo Ndimukaga François.

[23] Urukiko rurasanga kandi ibyo ITORERO UMWUNGERI MWIZA rivuga ko ryishyuye mushiki wa Ndimukaga François witwa Nyirabukara Bernadette mu izina ry'umuryango, atari byo, kuko yabibeshyuje ubwo Urukiko Rukuru rwageraga ku kiburanwa mu iperereza[3], akavuga ko isambu ya musaza we Ndimukaga François atigeze ayibaruza ngo yishyurwe amafaranga yayo, ndetse ko nawe atari yishyurwa inzu ye. Iyo mvugo ya Nyirabukara Bernadette inagaragara muri raporo yakozwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Remera ku wa 12/02/2010 yavuzwe haruguru, ubwo yakurikiranaga ikibazo cy'abaturage bavugaga ko batishyuwe. Urukiko rurasanga aho Nyirabukara Bernadette agaragara ku rutonde rw'abishyuwe, ari ku giti cye, adahagarariye umuryango.

[24] Ku bijyanye n'urubanza N°RC0626/10/TB/KCY na N°RCA0165/14/HC/KIG, ababuranira ITORERO UMWUNGERI MWIZA batanga nk'ikimenyetso bavuga ko habaye kwimura abantu ku mpamvu z'inyungu rusange bikozwe n'Akarere, Urukiko rurasanga zitashingirwaho, kuko ibyo bavuga bitagaragara muri izo manza, ndetse zikaba zitarigeze ziburanishwa mu mizi[4].

[25] Ibivugwa n'ababuranira ITORERO UMWUNGERI MWIZA ko NDIMUKAGA François adafite ubutaka ahaburanwa, ngo kuko atari kwa nyina ahubwo ari kwa mukase, Urukiko rurasanga ntacyo byamarira uwo baburanira kuko ubwabyo bitamuha uburenganzira kuri ubwo butaka mu gihe atabubonye mu buryo bukurikije amategeko. Ikigaragarira Urukiko, ni uko ubutaka buburanwa butunzwe na Ndimukaga François, haramutse hari undi uvuga ko ari ubwe, yazabiregera.

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[3] Iperereza Urukiko Rukuru rwakoze ku wa 3/2/2017 (P50, C49)

[4] Urubanza N° RCA 0165/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 16/12/2014, rwemeje ko urubanza ari urw'ubutegetsi rugomba kuburanishwa n'Urugereko rw'Urukiko Rwisumbuye ruburanisha imanza z'Ubutegetsi. Urubanza N° RC 0626/10/TB/KCY rwaciwe ku wa 31/05/2011 n'Urukiko rw'Ibanze rwa Kacyiru, rwemeje ko nta bubasha rufite bwo kuburanisha ibirego byerekeranye no kwimura abantu kubera inyungu rusange

[26] Ku byaburanishijwe n'ITORERO UMWUNGERI MWIZA, rivuga ko Urukiko Rukuru rwaburanishije ku kitari cyaregewe, ngo kuko rwaregewe ingurane rugacira urubanza ku butaka, Urukiko rurasanga atari byo kuko icyaregewe ari umutungo ugizwe n'isambu n'ibyarimo byose.

[27] Hashingiwe ku bisobanuro bimaze gutangwa no ku biteganywa mu ngingo ya 11 kugeza ku ya 16 z'Itegeko N°18/2007 ryo ku wa 19/04/2007, ryerekeye kwimura abantu ku mpamvu z'inyungu rusange ryakoreshwaga igihe ikibazo cyavukaga, Urukiko rurasanga Akarere ka Gasabo katarigeze kimura Ndimukaga François ku mpamvu z'inyungu rusange, ngo gahe ITORERO UMWUNGERI MWIZA isambu iburanwa; bityo iyo sambu ikaba igomba kuguma mu maboko ya Ndimukaga François.

- **Kumenya niba indishyi zasabwe muri uru rubanza zatangwa**

[28] Ndimukaga François yatanze ubujurire bwuririye ku bundi asaba ko ITORERO UMWUNGERI MWIZA ryategekwa kumuha indishyi z'akababaro n'ikurikiranarubanza zingana na 3.000.000 Frw, na 2.000.000 Frw y'igihembo cya Avoka.

[29] Uhagarariye ITORERO UMWUNGERI MWIZA avuga ko izo ndishyi nta shingiro zifite kuko ataribo bashoje urubanza, akavuga ko nabo basaba indishyi z'akababaro zingana na1.000.000 Frw, izo gusiragizwa mu manza nta mpamvu zingana na 2.000.000 Frw, na 3.000.000 Frw y'igihembo cya Avoka.

[30] Uburanira Akarere ka Gasabo yatanze ikirego kiregera kwiregura, asaba gutegeka urega guha Akarere indishyi zo gushorwa mu manza ku maherere zingana na 5.000.000 Frw, zikubiyemo 2.000.000 Frw y'igihembo cya Avoka na 3.000.000 Frw yo gushorwa mu manza nta mpamvu.

[31] Abahagarariye ITORERO UMWUNGERI MWIZA bavuga ko batigeze barega Akarere, kandi ko ari ko gakwiye gukiranura abaturage. Naho ku birebana n'amafaranga Ndimukaga François yaka, bavuga ko yatanze icyemezo cy'ukutishobora, ko atashobora kwishyura Avoka, bivuze ko hari uburyo yamugenewe. Bavuga kandi ko bibaza uburyo asaba indishyi mbonezamusaruro kandi ariwe usarura, ari nawe ufite ubutaka, ariyo mpamvu bavuga ko izo ndishyi zidakwiye.

Uko Urukiko rubibona

[32] Urukiko rurasanga Ndimukaga François akwiye kugenerwa indishyi, zigatangwa n'ITORERO UMWUNGERI MWIZA, kuko ariryo ryatumye atabasha kwibaruzaho ubutaka bwe ngo abukoreshe ikirenze kubuhinga, bigatuma ajya mu nkiko, agashaka n'umwunganira. Urukiko rurasanga izo ndishyi zagenwa mu bushishozi bwarwo, kuko izo Ndimukaga François asaba ari nyinshi, rukaba rumugeneye 1.000.000 Frw y'indishyi z'akababaro, 500.000 Frw y'igihembo cya Avoka kuri uru rwego, na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 1.800.000 Frw.

[33] Urukiko rurasanga indishyi zo gushorwa mu manza nta mpamvu Akarere ka Gasabo gasaba katazihabwa, kuko kukagobokesha mu rubanza bitari bigamije kugatesha umwanya, ahubwo byari bigamije gufasha imigendekere myiza y'urubanza. Urukiko rurasanga kahabwa

amafaranga y'igihembo cya Avoka kuko byabaye ngombwa ko gashaka ukunganira, ariko akagenwa mu bushishozi bwarwo kuko 2.000.000 Frw gasaba ari menshi kandi akaba ataratangiwe ibisobanuro, kakaba kagenewe angana na 500.000 Frw kuri uru rwego azatangwa n'ITORERO UMWUNGERI MWIZA. Urukiko rurasanga nta ndishyi zahabwa ITORERO UMWUNGERI MWIZA kuko ntacyo ritsindiye mu rubanza.

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ubujurire bw'ITORERO UMWUNGERI MWIZA nta shingiro bufite;

[35] Rwemeje ko imikirize y'urubanza N° RADA 0079/15/HC/KIG rwaciwe ku wa 11/04/2017 n'Urukiko Rukuru idahindutse;

[36] Rwemeje ko Ndimukaga François agumana isambu iburanwa;

[37] Rutegetse ITORERO UMWUNGERI MWIZA guha Ndimukaga François indishyi z'akababaro zingana na 1.000.000 Frw, 300.000 Frw y'ikuriranarubanza, na 500.000 Frw y'igihembo cya Avoka, yose hamwe akaba 1.800.000 Frw;

[38] Rutegetse ITORERO UMWUNGERI MWIZA guha Akarere ka Gasabo amafaranga y'igihembo cya Avoka angana na 500.000 Frw;

[39] Rutegetse ko ingwate y'amagarama yatanzwe n'ITORERO UMWUNGERI MWIZA ihwanye n'ibyakozwe mu rubanza.