

IKIGO CY'UBWITEGANYIRIZE MU RWANDA (RSSB) v. TWAGIRAMUNGU

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RAD
00004/2018/SC – (Rugege, P.J., Cyanzayire, Kayitesi R,
Hitiyaremye na Rukundakuvuga, J.) 30 Nyakanga 2019]

Amategeko agenga umurimo – Impanuka y'akazi – Ubumuga bwo mu mutwe – Ibarwa ry'indishyi zihabwa uwagize ubumuga bwo mu mutwe bukomoka ku mpanuka y'akazi, rikorwa kimwe n'izishingiye k'ubumuga bw'umubiri bwatewe n'impanuka y'akazi ziteganywa n'Iteka rya Perezida.

Incamake y'icyemezo: Twagiramungu yakoze impanuka y'akazi, umukoresha we abimenyesha RSSB, Umuganga wamusuzumye yerekanye ko afite ubumuga buhoraho bwa 45%, naho umuganga ngishwanama wa RSSB we yerekana ko afite ubumuga bwa 10%. Twagiramungu yasabye RSSB kumufasha muri ubwo bumuga yagize, imusubiza ko ntacyo yamumarira kuko nta nyandiko afite zemeza ko yamugaye.

Twagiramungu yareze RSSB mu Rukiko Rwisumbuye asaba ko yahabwa ibyo amategeko amwemerera biturutse ku mpanuka y'akazi yagize asaba no guhabwa indishyi zinyuranye. Urwo Rukiko rwategetse RSSB kumuha amafaranga yatanze yivuzi, ayo yatanze ku ngendo yivuzi, ay'insimburamushahara y'igihe atashoboye gukora, ay'ubumuga n'amafaranga y'ikurikiranarubanza. Mu kugena amafaranga ay'ubumuga buhoraho, rwashingiye ku kigero cy'ubumuga bwa 45% bwemejwe n'umuganga wo mu bitaro yivurizagamo.

RSSB yajuririye Urukiko Rukuru ivuga ko Urukiko rubanza rwemeje urugero rw'ubumuga bwa 45% rwirengagije amategeko igenderaho, ruyitegeka kwishyura Twagiramungu amafaranga yo kwivuzza kandi RSSB yarayishyuraga ibitaro byamuvuye, rugena amafaranga y'ingendo mu buryo bunyuranyije n'ibyo amategeko ateganya, rubara nabi amafaranga y'insimbura mushahara, ndetse ruyitegeka kwishyura indishyi kandi ari uwo baburana wishoye mu manza zitari ngombwa. Twagiramungu nawe yatanze ubujurire bwuririye ku bundi. Urukiko rwaciye urubanza rwemeza ko ubujurire bwa RSSB bufite ishingiro ku byerekeye amafaranga yo kwivuzza, n'ay'ingendo, rwemeza ko ubujurire bwuririye ku bundi bufite ishingiro ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kandi ko amafaranga ya buri kwezi y'ubumuga buhoraho agomba gutangwa guhera umunsi ukurikira uwo impanuka yabereyeho kugeza ku wa 22/03/2013 aho kuba ku wa 31/5/2013 .

RSSB yandikiye Urwego rw'Umuvunyi isaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane ivuga ko mu kugena ubumuga buhoraho Urukiko Rukuru rwirengagije ibyo amategeko ateganya mu gukemura impaka zerekeranye n'ikigero cy'ubumuga bwatewe n'impanuka y'akazi. Urwego rw'Umuvunyi, rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo kumpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga yemeje ko urwo urubanza rugomba kongera kuburanishwa.

Mu iburanisha Twagiramungu yitabye Urukiko adafite imbaraga zo kuburana, asaba ko rwafata icyemezo gitegeka RSSB kumuha amafaranga yo kwivuzza no kumusinyira akajya kwivuzza, kuko itamuha amafaranga uko bikwiye, ikaba yaranze no kumusinyira kandi afite ``rendez-vous`` yo kujya kubonana

n'Umuganga w'indwara zo mu mutwe. Mu rubanza rubanziriza urundi, Urukiko rwategetse RSSB gufasha Twagiramungu kuvuzwa mu bitaro bya CARAES Ndera ku bijyanye n'indwara yo mu mutwe, no kumuvuza indwara y'umubiri ikomoka ku mpanuka mu bitaro by'Umwami Faysal, kandi ikamufasha no kubona imiti yandikiwe n'abaganga b'ibyo bitaro, Urukiko rwanayitegetse kandi kubahiriza icyemezo cy'Urukiko ku bijyanye n'amafaranga yategetswe kumuha, kimwe n'ibirarane itamuhaye, mu gihe hagitegerejwe umwanzuro w'Abaganga.

RSSB yongeraho ko akarengane ka mbere muri uru rubanza aruko mu kubara amafaranga y'ubumuga bw'umubiri hashingiwe ku rugero ry'ubumuga bwa 45% byagenwe n'abatabifitiye ububasha, ariko ko ubu byakemuwe na Raporo y'Akanama k'Abaganga kashyizweho na MINISANTE kagaragaje ko afite ubumuga bw'umubiri bungana na 20%, bakaba basaba ko aricyo gipimo cy'ubumuga cyakoreshwa mu kubara amafaranga y'ubumuga bw'umubiri. Twagiramungu nawe avuga ko yemera ubumuga bwa 20% bw'umubiri bwagaragajwe n'Akanama k'Abaganga.

Iburanisha risubukuwe, RSSB ivuga kandi ko indi mpamvu y'akarengane ishingiye ku mafaranga y'insimburamushahara yabariwe kandi icyo gihe umukoresha we yarakomeje kumuhemba kuva yakora impanuka akaba yarahembwe amezi ane bityo isanga ayo agomba guhabwa ari ayo kuva igihe umukoresha we yahagarikiye umushahara we. Twagiramungu we asanga urukiko ntaho rwibeshye mu kubara ayo mafaranga, bityo ko ayo mafaranga atahinduka.

Ku kibazo cyo kumenya niba ubumuga bwo mu mutwe bwa 80% afite bukomoka ku mpanuka y'akazi yagize ku buryo yahabwa amafaranga ajyana nabwo, avuga ko bwatewe n'uko RSSB itamuvuje neza, agasobanura ko Raporo yakozwe

n`Umuganga igaragaza ko ubumuga bwo mu mutwe afite bufitanye isano n'impanuka yagiriye ku kazi akaba asaba ko RSSB yaryozwa ubwo burangare. RSSB ivuga ko ntakigaragaza ko ubwo bumuga yabutewe n'impanuka bityo ikaba isanga ubwo bumuga bwe bwo mu mutwe butayiryoza.

Incamake y'icyemezo:1. Ibarwa ry'indishyi zihabwa uwagize ubumuga bwo mu mutwe bukomoka ku mpanuka y'akazi, rikorwa kimwe n'izishingiye k'ubumuga bw'umubiri bwatwe n'impanuka y'akazi ziteganywa n'Iteka rya Perezida.

**Ikirego gisaba gusubirishamo urubanza ku mpamvu
z'akarengane gifite ishingiro kuri bimwe;
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.**

Amategeko yashingiweho:

Itegeko N° 22/2018 yo ku wa 29/4/2018 yerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12
Iteka rya Minisitiri N° 1931 bis/06 ryo ku wa 08/12/1987 rishyiraho uburyo bwo kumenyesha impanuka n'indwara zikomoka ku kazi, ingingo ya 6 igika cya 4.
Itegeko –Teka ryo ku wa 22/8/1974 rigena ubwiteganyirize bw'abakozi, nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 22 n'iya 23
Iteka rya Perezida N° 069/01 ryo ku wa 13/04/2018 ryongera amafaranga ya pansiyoni n'ay'ibyago bikomoka ku kazi atangwa n'Ikigo cy'Ubwiteganyirize mu Rwanda, ingingo ya 2

Itegeko ryo ku wa 30 Nyakanga 1888 ryerekeye ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 259.

Urubanza

I. IMITERERE Y'URUBANZA:

[1] Ku wa 23/11/2012, Twagiramungu Eric yakoze impanuka y'akazi, avunika ukuguru kw'ibumoso maze Trustco Rwanda Company, umukoresha we kuva mu kwezi kwa mbere mu mwaka wa 2012, abimenyesha RSSB. Ku wa 31/05/2013, umuganga ukorera mu bitaro byitiriwe Umwami Faysal wamusuzumye yerekanye ko afite ubumuga buhoraho buri ku kigero cya 45%, naho ku wa 19/06/2013, umuganga ngishwanama wa RSSB we yerekana ko afite ubumuga buri ku kigero cya 10%. Yasabye RSSB kumufasha muri ubwo bumuga yagize biturutse ku mpanuka y'akazi, imusubiza ko ntacyo yamumarira kuko nta nyandiko zemeza ko yamugaye afite.

[2] Twagiramungu Eric yareze RSSB mu Rukiko Rwisumbuye rwa Nyarugenge, asaba kuyitegeka ko imuha ibyo amategeko amwemerera biturutse ku mpanuka y'akazi yakoze, nk'ibijyanye n'insimburamushahara na pansiyoyi y'izabukuru, asaba no guhabwa indishyi zinyuranye.

[3] Ku wa 30/12/2014, Urukiko Rwisumbuye rwa Nyarugenge, rwaciye urubanza RAD 0132/13/TGI/NYGE, rwemeza ko ikirego cyatanzwe na Twagiramungu Eric gifite ishingiro kuri bimwe, rutegeka RSSB kumuha:

2.336.140Frw yatanze yivuzza; 438.000Frw yatanze ku ngendo yivuzza; 125.640Frw y'insimburamushahara mu gihe cy'iminsi 180 atashoboye gukora; 20.947Frw y'ubumuga buri kwezi, ibyo bigakorwa kuwa ku wa 31/5/2013, igihe muganga w'ibitaro by'Umwami Faysal yemereje urugero rw'ubumuga buhoraho bwa Twagiramungu Eric; gusubiza Twagiramungu Eric 200.000Frw y'ikurikiranarubanza.

[4] Mu kugena amafaranga y'ubumuga buhoraho, Urukiko rwavuze ko urugero rw'ubumuga bugomba gushingirwaho ari ubwemejwe n'umuganga wo mu Bitaro byitiriwe Umwami Faysal bwerekanywe muri raporo yo ku wa 31/5/2013, rwerekana ko Twagiramungu Eric afite ubumuga bwa 45% kubera ko ari naho yivurizaga, bakaba aribo bari baramukurikiranye mu burwayi bwe, aho gushingira kuri raporo yo ku wa 19/6/2013 yakozwe n'umuganga ngishwanama wa RSSB yerekana ko ubumuga afite ari 10% kubera ko urukiko rukemanga ukuri kuyikubiyemo kubera ko yakozwe n'umuganga w'uregwa.

[5] Mu kugena amafaranga y'insimburamushahara, Urukiko rwashingiye ku mafaranga yahembwaga angana na 27.943Frw, ruvuga ko umushahara ngereranyo w'umunsi ari $27.943 \times 3:90 = 931\text{Frw}$, aya mafaranga akubwa 75% by'umushahara ngereranyo wa buri munsi.

[6] RSSB yajuririye Urukiko Rukuru ivuga ko Urukiko Rwisumbuye rwemeje urugero rw'ubumuga bwa 45% rwirengagije amategeko igenderaho, ruyitegeka kwishyura Twagiramungu amafaranga yo kwivuzza kandi yarayishyuraga ibitaro byamuvuye, rugena amafaranga y'ingendo mu buryo bunyuranyije n'ibyo amategeko ateganyaga, rubara nabi

amafaranga y'insimbura mushahara, ndetse ruyitegeka kwishyura indishyi kandi ari uwo baburana wishoye mu manza zitari ngombwa. Twagiramungu nawe yatanze ubujirire bwuririye ku bundi.

[7] Urukiko Rukuru rwacye urubanza RADA 0007/15/HC/KIG ku wa 30/04/2015, rwemeza ko ubujirire bwa RSSB bufite ishingiro ku byerekeye amafaranga yo kwivuzza 2.336.140, n'ay'ingendo 438.000 yari yategetswe guha Twagiramungu, akaba avanyweho, rwemeza ko ubujirire bwuririye ku bundi bwa Twagiramungu Eric bufite ishingiro ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, rutegeka RSSB kumuha 300.000Frw na 100.000Frw yiyongera ku mafaranga yari yategetswe kumuha mu rubanza rwajuririwe. Urukiko rwemeje kandi ko amafaranga 20.947Frw ya buri kwezi y'ubumuga buhoraho agomba gutangwa guhera umunsi ukurikira uwo impanuka yabereyeho kugeza ku wa 22/03/2013 aho kuba ku wa 31/5/2013, ni ukuvuga iminsi 119 aho kubara iminsi 180.

[8] RSSB yandikiye Urwego rw'Umuvunyi isaba ko urwo rubanza rwasubirishwamo ku mpamvu z'akarengane, ivuga ko mu kugena ubumuga buhoraho bwa Twagiramungu, Urukiko Rukuru rwirengagije amategeko kandi hari uburyo ateganya mu gukemura impaka zerekeranye n'ikigero cy'ubumuga bwatewe n'impanuka y'akazi, iyo nzira RSSB ikaba yari yarayitangije yandikira Minisitiri w'Ubuzima imusaba ko yashyiraho Akanama k'Abaganga bo gupima Twagiramungu nk'uko biteganywa n'ingingo ya 6 y'Iteka rya Minisitiri N°1931BIS/06 ryo ku wa 08/12/1987 rishyiraho uburyo bwo kumenyesha impanuka n'indwara zikomoka ku kazi.

[9] Urwego rw'Umuvunyi, rwandikiye Perezida w'Urukiko rw'Ikirenga, ruvuga ko imikirize y'urubanza N° RADA 0007/15/HC/KIG igaragaramo akarengane¹, rusaba ko rwasubirwamo.

[10] Perezida w'Urukiko rw'Ikirenga, ashingiye kuri Raporo y'Ubugenzuzi Bukuru bw'Inkiko, mu cyemezo N° 028/2018 yemeje ko urubanza RADA 0007/15/HC/KIG rugomba kongera kuburanishwa, iburanisha rishyirwa kuwa 24/07/2018, ariko uwo muni ugeze, ntirwaburanishwa kubera ivugururwa ry'amategeko.

[11] Iburanisha ry'urubanza ryashyizwe ku wa 10/10/2018, urubanza ntirwaburanishwa kubera ko Twagiramungu Eric yitabye ariko adafite imbaraga zo kuburana, ahubwo asaba Urukiko ko rwafata icyemezo gitegeka RSSB kumuha amafaranga yo kwivuzura no kumusinyira akajya kwivuzura, kuko itamuha amafaranga uko bikwiye, ikaba yaranze no kumusinyira kandi afite ``rendez-vous`` yo kujya kubonana n'Umuganga w'indwara zo mu mutwe. Yasobanuye ko abaganga bo mu bitaro byitiriwe Umwami Faysal

¹ Urwego rw'Umuvunyi rusobanura ko Urukiko Rukuru rwashingiye ku kigero cy'ubumuga buhoraho RSSB itemera kandi ntirwakurikiza amategeko mu bijyanye no gukemura impaka zijyanye n'ikigero cy'ubumuga bwatwe n'impanuka yo ku kazi.

Ruvuga ko mu gihe Urukiko rwabonaga ko ubwumvikane hagati ya Twagiramungu Eric na RSSB bwananiranye, kandi rukaba rwari rwamenyeshajwe ko RSSB yandikiye Minisitiri w'Ubuzima imusaba ko yashyiraho Akanama k'abaganga nk'uko biteganywa n'ingingo ya 6 y'Iteka rya Minisitiri N° 1931/bis/06 ryo ku wa 08/12/1974 rishyiraho uburyo bwo kumenyeshya impanuka n'indwara zikomoka ku kazi, rwari gukoresha ububasha bwari maze ishyirwaho ry'ako kanama rikihutishwa ariko ntiruce urubanza rushingiye kuri raporo z'abaganga zitumvikanweho, kandi itegeko riteganywa uko bikemuka iyo habayeho impaka nk'izo.

bamukurikirana, basanze afite ikibazo mu mutwe bamwohereza mu bitaro by'indwara zo mu mutwe i Ndera, iburanisha rishyirwa ku munsu utazwi (sine die).

[12] Uru Rukiko rukurikije icyemezo cyo ku wa 01/10/2018 cy'Akanama k'Abaganga kemeje ko Twagiramungu Eric agomba gupimwa ibyerekeye uburwayi bwe bwo mu mutwe nyuma yo guhabwa ubuvuzi bukwiye; rukurikije raporo yo ku wa 23/2/2017 yatanze na Muganga w'ibitaro bya CARAES Ndera igaragaza ko Twagiramungu Eric afite ubumuga buhoraho buri ku kigero cya 80%; rwategetse RSSB gufasha Twagiramungu kuvuzwa mu bitaro bya CARAES Ndera ku bijyanye n'indwara yo mu mutwe, no kumuvuzza indwara y'umubiri ikomoka ku mpanuka mu bitaro by'Umwami Faysal, kandi ikamufasha no kubona imiti yandikiwe n'abaganga b'ibyo bitaro.

[13] Urukiko rwategetse kandi ko Twagiramungu nyuma y'amezi 3, azongera gusuzumwa n'Akanama k'Abaganga kavuzwe haruguru, kugira ngo hagaragazwe ubumuga bwe buhoraho (ubumuga bw'umubiri n'ubw'umutwe), ndetse hakagaragazwa n'itariki ibikomere byasubiranye (consolidation). Rwategetse RSSB kubahiriza icyemezo cy'Urukiko ku bijyanye n'amafaranga yategetswe guha Twagiramungu Eric, kimwe n'ibirarane itamuhaye, mu gihe hagitegerejwe umwanzuro w'Abaganga.

[14] Urubanza rwagombaga kuburanishwa ku wa 23/04/2019 ariko uwo munsu iburanisha ntiryaba kubera ko Twagiramungu nta Avoka yari afite umwunganira kuko Me Murekatete B. Marguerite wari usanzwe amwunganira, yari yarafatiwe ibihano atarabirangiza. Iburanisha ryimuriwe ku wa 28/05/2019, abaturanyi bose bamenyeshwa iyo tariki.

[15] Mbere y'uko iburanisha risubukurwa, Twagiramungu yashatse undi avoka witwa Me Karangwayire Epiphane kugirango amwunganire, ariko ibyo Twagiramungu Eric yategetswe n'Urukiko byo kongera gusuzumwa n'Akanama k'Abaganga, kugira ngo hagaragazwe ubumuga bwe buhoraho (ubumuga bw'umubiri n'ubw'umutwe), ndetse hakagaragazwa n'itariki ibikomere byasubiranye (consolidation) bikaba bitarakozwe.

[16] Me Karangwayire Epiphane umwunganira yashyikirije Urukiko inyandiko zirimo ibaruwa yo ku wa 16/04/2019 RSSB yandikiye Twagiramungu imwibutsa ko agomba kujya mu bitaro byitiriwe Umwami Faysal kwipimisha kugirango muganga agaragaze ubumuga asigaranye.

[17] Urubanza rwongeye kuburanishwa ku wa 28/05/2019 hasuzumwa niba ibyategetswe n'Urukiko byo gupima ubumuga bwa Twagiramungu Eric byaba byarakozwe, rusanga bitarigeze bikorwa, muri iryo buranisha hanasuzumwe ibyasabwe na Twagiramungu by'uko yaba ahawe amafaranga yo kumutunga mu gihe urubanza rutaracibwa, kuko ubuzima bwe bugenda burushaho kwangirika kubera ko haziyemo n'izindi ndwara zikomoka ku kuba atavuzwa uko bikwiye, kutabona imiti yandikiwe na muganga no kuba abayeho ubuzima bubi kuko adafite ikimutunga n'uburyo bwo kuriha abamufasha.

[18] Urukiko rwafashe icyemezo cy'agateganyo (ADD) kuri ibyo byasabwe na Twagiramungu Eric, rutegeka MINISANTE gushyiraho Akanama k'abaganga ku buryo bwihuse kagomba kugaragaza ubumuga bwo mu mutwe n'ubw'umubiri Twagiramungu Eric afite n'aho agomba kuvurirwa, kandi raporo ikaba yageze mu Bwanditsi bw'Urukiko rw'Ikirenga bitarenze ku wa 20/06/2019, rutegeka RSSB guhita imuvuza

indwara zikomoka ku bumuga yatewe n'impanuka mu bitaro byitiriwe Umwami Faysal no mu bitaro by` i Ndera bivura indwara zo mu mutwe n'ahandi hose hagenwa n'abaganga bo muri ibyo bitaro, rutegeka RSSB kumugurira imiti yose yandikiwe n'abaganga bidatinze kugirango hirindwe izindi ngaruka mbi ku buzima bwe, rutegeka RSSB guhita iha Twagiramungu Eric 2.000.000 Frw yo kumufasha kubaho n'ingendo zo kwivuzza mu gihe urubanza rutararangira, rutegeka RSSB gukurikirana ko raporo y'akanama k'abaganga iboneka ikagezwa ku Rukiko, Twagiramungu Eric nawe ategukwa kwitaba Akanama k'abaganga igihe cyose kamukeneye.

[19] MINISANTE yagejeje ku Rukiko rw'Ikirenga Raporo y'Akanama k'Abaganga ku wa 08/7/2019 nk'uko yari yabitegetswe. Iyo raporo igaragaza ko Twagiramungu Eric afite ubumuga bw'umubiri bungana na 20%, n'ubumuga bwo mu mutwe bungana na 80%.

[20] Urubanza rwongeye kuburanishwa ku wa 10/07/2019, RSSB ihagarariwe na Me Nsabimana James afatanyije na Me Sekabuke Jean Paul, Twagiramungu Eric yunganiwe na Me Karangwayire Epiphanie, Me Murekatete Marguerite na Me Twagirumugabe Alexis. Iburanisha ryarapfundikiwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 30/07/2019.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya amafaranga Twagiramungu Eric agomba guhabwa ahwanye n'ubumuga bw'umubiri.

[21] Me Nsabimana James na Me Sekabuke Jean Paul bahagarariye RSSB bavuga ko akarengane ka mbere muri uru rubanza ari uko Urukiko Rukuru rwa Kigali mu kubara amafaranga y'ubumuga bw'umubiri agomba kugenerwa Twagiramungu, rwashingiye ku ngano y'ubumuga bwa 45% yagenwe n'abatabifitiye ububasha, ko ariko kuri ubu byakemuwe na Raporo y'Akanama k'Abaganga kashyizweho na MINISANTE kagaragaje ko afite ubumuga bw'umubiri bungana na 20%, bakaba basaba ko aricyo gipimo cy'ubumuga (taux d'incapacité physique/physical disability) cyakoreshwa mu kubara amafaranga y'ubumuga bw'umubiri Twagiramungu agomba kugenerwa.

[22] Me Nsabimana James na Me Sekabuke Jean Paul bavuga kandi ko uburyo bwakoreshejwe n'Urukiko Rukuru habarwa ayo mafaranga atari bwo kuko Umucamanza yayabaze nk'insimburamushahara, aho yafashe umushahara yabonaga ku muni wa 931 (27.943Frw ku kwezi) x iminsi 30 x 75% x 45% = 20.847Frw, aho gufata umushahara we ku muni wa 931 x 30 x 85% x 20% = 4.748Frw, akaba ariyo agomba kubona buri kwezi. Bavuga ariko ko hashingiwe ku ngingo ya 2 y'Iteka rya Perezida N° 069/01 ryo ku wa 13/04/2018 ryongera amafaranga ya pansiyoni n'ay'ibyago bikomoka ku kazi atangwa n'Ikigo cy'ubwitateganyirize mu Rwanda, Twagiramungu Eric yahabwa 13.000Frw buri kwezi.

[23] Me Karangwayire Epiphanie, Me Murekatete Marguerite na Twagirumugabe Alexis bunganira Twagiramungu, bavuga ko bemera ubumuga bwa 20% bw'umubiri bwa Twagiramungu bwagaragajwe n'Akanama k'Abaganga.

UKO URUKIKO RUBIBONA

[24] Urukiko rusanga koko mu kugenera Twagiramungu amafaranga y'ubumuga, Urukiko Rukuru rwaranyuranyije n'ibiteganywa n'Itegeko kuko rwashingiye ku gipimo cy'ubumuga cya 45% cyagenwe n'umuganga wamuvuye, aho kugenwa n'Akanama k'Abaganga nkuko biteganywa n'ingingo ya 6, igika cyayo cya 4 y'Iteka rya Minisitiri N° 1931 bis/06 ryo ku wa 08/12/1987 rishyiraho uburyo bwo kumenyesha impanuka n'indwara zikomoka ku kazi iteganya ko: ``[.....], iyo habaye impaka ku byerekeye itariki umurwayi yakiriyeho, ku gihe ibikomere byoroheyeho cyangwa se ku kigereranyo cy'ubumuga bwe budatezuka, nyir'ubwite ashyikiriza ikibazo Akanama Karenganura, nako kakifashisha Akanama k'Abaganga gashyirwaho na Minisitiri ushinze ubuzima mu gukemura izo mpaka``.

[25] Urukiko rw'Ikirenga rusanga rero uburyo ayo mafaranga yabazwemo bitarakurikije amategeko kuko nk'uko byagaragajwe na Raporo y'Akanama k'Abaganga kashyizweho na Minisitiri w'ubuzima, Twagiramungu afite ubumuga bw'umubiri bungana na 20% aho kuba 45%, bityo akaba agomba kugenerwa amafaranga y'ubumuga bw'umubiri hashingiwe ku rugero rw'ubumuga bwa 20%, no ku gipimo cya 75% cy'umushara we wa buri muni nk'uko biteganywa n'ingingo ya 23 y'Itegeko –Teka ryo ku wa 22/8/1974 rigena ubwiteganyirize bw'abakozi, nk'uko ryahinduwe kandi ryujujwe kugeza ubu ivuga ko umukozi utarakira burundu, ni ukuvuga ufite ubumuga budahoraho, ahabwa amafanga angana na 75% by'umushara we wa buri muni, akaba rero agomba kubona $(931 \times 30 \times 75\% \times 20\%) = 4,189$ Frw buri kwezi. Rusanga ariko hashingiwe ku ngingo ya 2 y'Iteka rya Perezida N° 069/01

ryo ku wa 13/04/2018 ryongera amafaranga ya pansiyoni n'ay'ibyago bikomoka ku kazi atangwa n'ikigo cy'Ubwiteganyirize mu Rwanda iteganya ko amafaranga y'ubwiteganyirize bwa pansiyoni n'ay'ibyago bikomoka ku kazi ahabwa uwiteganyirije adashobora kujya muni y'ibihumbi cumi na bitatu (13.000Frw) ku kwezi`. Urukiko rusanga rero ayo Twagiramungu Eric agomba guhabwa ari 13.000Frw ku kwezi, aho kuba 20,947Frw nk'uko byari byemejwe mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane.

Kumenya ingano y'amafaranga y'insimburamushahara Twagiramungu Eric yagombaga guhabwa.

[26] Me Nsabimana James na Me Sekabuke Jean Paul baburanira RSSB bavuga ko indi mpamvu y'akarengane ishingiye ku mafaranga y'insimburamushahara yabariwe Twagiramungu, basobanura ko Urukiko rwamuhaye amafaranga kandi icyo gihe umukoresha we yarakomeje kumuhemba kuva yakora impanuka ku wa 23/11/2012. Bavuga ko yahembwe amezi ane (4): ukwezi kwa 11/2012, ukwa 12/2012, ukwa 01/2013 n'ukwa 2/2013, bakaba basanga ayo agomba guhabwa ari ayo kuva igihe umukoresha we yahagarikiye umushahara we, ko basanga agomba kubarirwa umushahara w'iminsi 21, aho kuba iminsi 119, ko kuba urukiko rwaramubariye iminsi ingana gutyo ari akarengane muri urwo rubanza gakwiye gukosorwa.

[27] Me Karangwayire Epiphanie, Me Murekatete Marguerite na Me Twagirumugabe Alexis bunganira Twagiramungu bo basanga ku mibare y'amafaranga yatanzwe n'Urukiko mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane ntaho rwibeshye, ko ayo mafaranga atahinduka.

UKO URUKIKO RUBIBONA

[28] Urukiko rw'Ikirenga rusanga amafaranga y'insimburamushahara angana na 83,062 Frw mu gihe cy'iminsi 119 yagenwe n'Urukiko Rukuru ariyo Twagiramungu yagombaga guhabwa, kuko nta kimenyetso RSSB yatanze kigaragaza ko kuva aho yakoreye impanuka, yakomeje guhembwa mu gihe cy'iminsi 119 aho kuba 21, hashingiwe ku ngingo ya 12 y'Itegeko N°22/2018 yo ku wa 29/4/2018 yerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n,iz,ubutegetsi ivuga ko “urega agomba kugaragaza ibimenyetso by'ibyo aregera, iyo abibuze uwarezwe aratsinda [...]”, bityo hakaba nta karengane RSSB yagiriwe mu buryo bwo kubara amafaranga nsimburamushahara.

Kumenya niba ubumuga bwo mu mutwe bwa 80% Twagiramungu Eric afite bukomoka ku mpanuka y'akazi yagize ku wa 23/12/2012, ku buryo yahabwa amafaranga ajyana nabwo.

[29] Me Karangwayire Epiphanie, Me Murekatete Marguerite na Me Twagirumugabe Alexis bunganira Twagiramungu Eric bavuga ko ubumuga bwo mu mutwe Twagiramungu Eric afite bungana na 80% bwatewe n'uko RSSB itamuvuje neza, bagasobanura ko Raporo yakozwe n'Umuganga w'ibitaro byitiriwe Umwami Faysal igaragaza ko ubumuga bwo mu mutwe Twagiramungu afite bufitanye isano n'impanuka yagiriye ku kazi kuko yahanutse aho yubakaga (mu rwego rw'akazi) akubita umutwe mu kirahuri, ko ariko yavujwe akaguru konyine n'ubwo bagaragaje ko afite ikibazo mu mutwe hamwe n'icy'amenyo yacitse. Bagasobanura ko uko kutamuvura izo ndwara zindi byatumye ubumuga bwo mu

mutwe buzamuka bukagera ku rugero rwa 80% rwagaragajwe n'Akanama k'Abaganga, bakaba basanga RSSB igomba kuryozwa ubwo burangare, bashingiye ku ngingo za 258, 259 na 260 z'Itegeko ryo ku wa 30 Nyakanga 1888 ryerekeye ibyerekeye imirimo nshinganwa cyangwa amasezerano, igaha Twagiramungu indishyi zinyuranye zasabwe mu rubanza cyane cyane ko yakoze impanuka akiri muto, ubu akaba ntacyo ashobora kwimarira.

[30] Me Nsabimana James na Me Sekabuke Jean Paul baburanira RSSB, bavuga ko Akanama k'Abaganga kagaragaje ko Twagiramungu afite ubumuga bwo mu mutwe bungana koko na 80%, ariko ko abamwunganira batagaragaza ko ubwo bumuga yabutewe n'impanuka yabaye ku wa 23/11/2012, ahubwo bakavuga ko yabutewe na RSSB kubera kutamuvuza. Basobanura ahubwo ko hari Raporo yakozwe n'Umuganga w'ibitaro bya CARAES Ndera yo ku wa 19/03/2019 igaragaza ko Twagiramungu Eric yagize ``traumatisme cranien``, bo bakaba basanga ubwo bumuga bwe bwo mu mutwe butaryozwa RSSB, ko bo bemera ko yagize impanuka akagira ikibazo ku kuguru gusa, kuko Twagiramungu akora impanuka yayikoreye ahantu hatari ``étage``, kuburyo nta kuntu yaba yaraguye akabanza umutwe hasi. Basaba ko harebwa ``medical file`` ye mu Bitaro by'Umwami Faysal niba yarigeze yivuzwa mu mutwe.

UKO URUKIKO RUBIBONA.

[31] Dosiye y'urubanza igaragaza inyandiko yo ku wa 21/9//2015 RSSB yandikiye ibitaro byitiriwe Umwami Faysal, iha Twagiramungu uburenganzira bwo kwivuriza muri ibyo bitaro, ikavuga ko icyo yishingiye ari ukuvurwa ukuguru gusa.

[32] Dosiye y'urubanza igaragaza ko mu nyandiko y'isuzumwa rya Twagiramungu Eric ku itariki ya 01/10/2016, Umuganga wa KFH (Neurosurgery Departement), Dr Nkusi E. yagaragaje ko Twagiramungu yagize ibikomere mu bwonko hamwe n'invune y'ukuguru kw'ibumoso, abivuga muri aya magambo y'icyongereza: *Eric Twagiramungu, 25 years old: traumatic brain injury in 2012 and left leg injury.*

[33] Dosiye igaragaza kandi inyandiko y'imiti iri mu rurimi rw'Icyongereza Umuganga w'amenyo w'ibitaro byitiriwe Umwami Faysal yandikiye Twagiramungu igaragaza ko yatakaje amenyo abiri (2) yangirika n'urwasaya ku buryo adashobora kurya neza` (*this above patient lost 2 units of teeth which affects themasticatory function. We recommend to replace the missing 2 units of flexible partial denture.... for 190,000RWF*). Abimenyesha kandi RSSB.

[34] Dosiye igaragaza nanone raporo ya Dr Sebera Fidel aho yerekanye mu rurimi rw'igifaransa ko Twagiramungu Eric yagize “traumatisme cranién” ikomoka ku mpanuka y'akazi yagize mu mwaka wa 2012 “(*L'Hôpital Caraes a reçu Twagiramungu le 14/10/2016 avec un transfert de CHK avec un tableau Clinique dominé par errance, l'agressivité, comportement hallucinatoire, langage incohérent, instabilité biscomotrice, insomniá associé à des céphalées. Ce tableau clinique est survenu à la suite d'un accident de travail ayant occasionné un traumatisme cranién. Cet accident est survenu en 2012 (cote 85)*”.

[35] Urukiko rw'Ikirenga rurasanga igihe Twagiramungu yagiraga impanuka, RSSB yari yishingiye kumuvuza gusa ubumuga bw'ukuguru nk'uko bigaragazwa n'inyandiko yo ku wa 21/9/2015 yandikiye ibitaro byitiriwe Umwami Faysal. Urukiko

rurasanga ariko nkuko bigaragazwa na Raporo zakozwe n`abaganga batandukanye bagiye basuzuma Twagiramungu, mu bisobanuro byabo, bose bagaragaje ko igihe cy`impanuka habaye kwangirika mu bwonko, RSSB ikaba itarigize imuvuza ubwo burwayi bundi nyamara yari yabugaragarijwe n`abaganga bamukurikiranye. Urukiko rusanga rero RSSB ntaho yahera ihakana ko ubwo burwayi bwo mu mutwe budakomoka kuri iyo mpanuka yagize ku wa 23/11/2012, ko ari indwara zo mu mutwe yari asanganywe nk`uko ishaka kubyemeza, cyangwa se yaba ari indi mpanuka yaba yarakoze yabiteye nk`uko ibivuga.

[36] Hashingiwe ku bimaze kugaragazwa, Urukiko rusanga kuba RSSB itaravuje Twagiramungu n`ubwo bumuga bwo mu mutwe bwatewe n`impanuka yagize yo ku wa 23/11/2012 kandi yaragombaga kubikora nkuko yabikoze ku bumuga bw`akaguru, hashingiwe ku ngingo ya 22 y'Itegeko-Teka ryo ku wa 22/8/1974 rigenga ubwiteganyirize bw`abakozi nk`uko ryavuguruwe kandi ryujujwe kugeza ubu iteganya ubuvuzi bw`umukozi wagize impanuka y`akazi, kuko iyi ngingo y'Itegeko itavuga ko RSSB yishingira gusa ubumuga bw`umubiri, ikaba rero igomba kuryozwa n`ikiguzi cy`ubuvuzi bw`ubumuga bwo mu mutwe bungana na 80% nk`uko Akanama k'Abaganga kabigaragaje muri Raporo yako yo ku wa 08/7/2019.

[37] Ku birebana n`amafaranga y`ubwo buvuzi bw`ubumuga bwo mu mutwe, Urukiko rusanga nk`uko amafaranga y`ubumuga bw`umubiri yabazwe ari nako amafaranga y`ubumuga bwo mu mutwe agomba kubarwa, bityo RSSB ikaba igomba guha Twagiramungu buri kwezi amafaranga abazwe mu buryo bukurikira: $931 \times 30 \times 75\% \times 80\% = 16,758 \text{Frw}$ buri kwezi, bityo yose hamwe harimo n`ay`ubumuga bw`umubiri RSSB

ikaba igomba kujya imuha buri kwezi 16,758Frw +13,000 Frw =29,758Frw.

Kumenya niba ubujurire bwuririye ku bundi bwatanzwe na Twagiramungu Eric bufite ishingiro.

[38] Twagiramungu n`Abavoka bamwunganira basaba mu bujurire bwuririye ku bwa RSSB ko Urukiko rwategeka ko Twagiramungu avurizwa mu mahanga kubera ko RSSB yatinze kumuvuza, igashyira ubuzima bwe mu kaga kurushaho, bituma ubumuga bwe buzamuka kugeza mu mutwe. Basaba kandi ko yavurwa urwasaya rwangiritse igihe cy'impanuka akanasimburirwa amenyo abiri yatakaje icyo gihe.

[39] Bavuga ko ibyo kumwohereza mu mahanga bidashobotse, basaba ko Urukiko rwafata icyemezo cyo kumutandukanya na RSSB kuko yarangije kumukorera iyicarubozo, Urukiko rukaba rwamugenera 60.000.000 Frw yo kwivuzwa hamwe na 50.000.000Frw yo kubaho.

[40] Banasaba kandi ko RSSB yabimuhera indishyi z'akababaro na 60,000,000Frw igihembo cya Avoka n`amafaranga yakoresheje asiragizwa mu manza.

[41] Me Nsabimana James na Me Sekabuke Jean Paul baburanira RSSB bavuga ko ibyo kumuvuza hanze batigeze babyanga kuko atariwe waba abaye uwa mbere bavuje hanze y'igihugu, ko ariko ibyo bikorwa ari uko bitegetswe n`abaganga, nyamara kuri Twagiramungu Eric, ibyo bikaba bitarigeze bitegekwa, akaba ahubwo ariwe urushya RSSB yanga gukora ibyo imusaba.

[42] Me Nsabimana James na Me Sekabuke Jean Paul bavuga ko ayo mafaranga atatangwa kuko atari ko amategeko abiteganyanye, ko ibyo asaba atabyemererwa n'Urukiko.

UKO URUKIKO RUBIBONA

[43] Ku byerekeye kuvurizwa hanze y'Igihugu Twagiramungu asaba, Urukiko rw'Ikirenga rusanga ntaho rwahera rubitegeka, kuko nta cyemezo cyafashwe n'umuganga kigaragaza ko agomba kuvurizwa hanze bikemezwa n'Akanama k'Abaganga, hakurikijwe inzira zisanzwe zikoreshwa mu gihe ubuvuzi bwo mu gihugu butabifitiye ubushobozi.

[44] Ku birebana n'ibisabwa na Twagiramungu ko Urukiko rwamutandukanya na RSSB, rukamugenera amafaranga yo kwivuzwa no kubaho, Urukiko rurasanga ntaho rwahera rubyemeza kuko ubwo buryo bwo kugenera uwishingiye amafaranga akimenya, ntaho biteganyijwe mu Itegeko rigena mu buryo bwihariye ibigenerwa abagize impanuka n'indwara zikomoka ku kazi. Urukiko rurasanga ahubwo RSSB igomba gukomeza kumuvuzwa indwara zose zikomoka ku mpanuka y'akazi yagize yo ku wa 23/11/2012 zirimo akaguru, urwasaya, gusimbura amenyo, indwara zo mu mutwe kuva aho agiriye impanuka no kugurirwa imiti yose yandikiwe na Muganga.

[45] Naho ku bijyanye n'indishyi zitandukanye Twagiramungu yasabye mu bujurire bwuririye ku bundi, zikaba zigomba gusuzumirwa hamwe n'indishyi zasabwe n'abaturanyi bombi muri uru rubanza.

Ku byerekeye indishyi RSSB isaba

[46] Me Nsabimana James na Me Sekabuke Jean Paul basaba indishyi zingana na 100.000 Frw zo gushorwa mu manza ku maherere.

[47] Abunganira Twagiramungu Eric basanga indishyi zisabwa na RSSB itazihabwa kuko ariyo yamushoye mu manza yanga kumuha ibyo amategeko amugenera nyuma yo gukora impanuka y`akazi kandi yari yarazigamiwe n`umukoresha we.

UKO URUKIKO RUBIBONA

[48] Urukiko rw`Ikirenga rusanga indishyi zisabwa na RSSB zo gushorwa mu manza, itazihabwa kuko ariyo yashoje urubanza kuri uru rwego kandi hakaba hari ibyo itsindiwe

Ku byerekeye indishyi Twagiramungu Eric asaba.

[49] Twagiramungu Eric n`abamwunganira basaba RSSB indishyi zikurikira:

Indishyi zingana na 60.000.000Frw kubera ko RSSB yamurangaranye bituma atavurwa neza, ubumuga bw`umuburi n`ubwo mu mutwe bugenda bwiyonera.

amafaranga 1.000.000 yakoresheje mu ngendo akurikirana urubanza hamwe n`ay`igihembo cya Avoka angana na 1.000.000 Frw.

[50] Me Nsabimana James na Me Sekabuke Jean Paul baburanira RSSB bavuga ko amafaranga y`indishyi zitandukanye asabwa na Twagiramungu Eric atayahabwa kuko atari RSSB yamushoye mu manza.

UKO URUKIKO RUBIBONA

[51] Urukiko rw'Ikirenga rusanga indishyi zisabwa na Twagiramungu Eric zishingiye ku burangare RSSB yamugiriye zifite ishingiro ku bijyanye no kwivuzwa kwe, imusiragiza mbere yo kumuha ibyemezo bimuhesha uburenganzira bwo kwivuzwa no kugura imiti, ndetse bikaba bigaragara ko kugeza ubu RSSB yagize uburangare n'umwete muke ntiyamuvuzwa uko bikwiye urwasaya, ngo inamugurire andi menyo, ibi bikaba byaratumye ubumuga bwe bukomeza kuzamuka hanaziramo n'izindi ndwara, ikaba igomba kubitangira indishyi hashingiwe ku ngingo ya 259 y'Itegeko ryo ku wa 30 Nyakanga 1888 ryerekeye ibyerekeye imirimo nshinganwa cyangwa amasezerano iteganyako 'umuntu ataryozwa ibyangiritse biturutse ku bikorwa bye bwite gusa, ahubwo anaryozwa ibyangiritse kubera umwete we muke cyangwa ubwitonzi buke'. Urukiko rusanga ariko indishyi Twagiramungu asaba ari nyinshi, mu bushishozi bwawo rukaba rumugeneye izingana na 12.000.000Frw, hakavanwamo 2.000.000Frw yo kubaho no kwivuzwa, n'ingendo byategetswe n'uru Rukiko mu rubanza rubanziriza urundi, mu gihe urubanza rwari rutaracibwa burundu, hagasigara 10.000.000Frw agomba guhabwa.

[52] Urukiko rusanga kandi Twagiramungu yariyambaje Abavoka bamwunganira muri uru rubanza, hari n'amafaranga yagiye atanga akurikirana urubanza harimo ingendo nibindi, kubera iyo mpamvu RSSB ikaba igomba kumuha 1.500.000 Frw y'igihembo cyabo na 300.000Frw y'ikurikiranarubanza.

[53] Ku byerekeye amafaranga yo gusimbuza amenyo, Urukiko rw'Ikirenga rusanga amafaranga Twagiramungu asaba atayahabwa, ahubwo nk'uko byari byategetswe n'uru Rukiko mu

rubanza rubanziriza urundi RS/INJUST/RAD 00004/2018/SC rwaciwe ku wa 25/6/2019, RSSB igomba gukomeza kumuvuza indwara zose zikomoka ku bumuga yatewe n'impanuka yo ku wa 23/11/2012, harimo kumuvuza urwasaya no kumugurira amenyo, mu bitaro byitiriwe Umwami Faysal no mu bitaro bya CARAES i Ndera, n'ahandi hose hagenwa n'abaganga b'ibyo bitaro.

III. ICYEMEZO CY'URUKIKO

[54] Rwemeje ko ikirego cyatanzwe na RSSB gisaba gusubirishamo ku mpamvu z'akarengane urubanza RADA 0007/15/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali ku wa 30/04/2015 gifite ishingiro kuri bimwe;

[55] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Twagiramungu Eric bufite ishingiro kuri bimwe;

[56] Rwemeje ko imikirize y'urubanza RADA 0007/15/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali ku wa 30/04/2015 ihindutse kuri bimwe;

[57] Rwemeje ko Twagiramungu Eric afite ubumuga bw'umubiri bungana na 20%, ubumuga bwo mu mutwe bungana na 80% nk'uko bwemejwe n'Akanama k'Abaganga muri Raporo yako yo ku wa 08/7/2019;

[58] Rwemeje ko ubumuga bwo mu mutwe bwa Twagiramungu Eric bukomoka ku mpanuka y'akazi yagize ku wa 23/11/2012;

[59] Rutegetse RSSB guha Twagiramungu Eric amafaranga y`ubumuga ya buri kwezi angana na 29.758Frw;

[60] Rutegetse ko RSSB igomba gukomeza kumuvuza indwara zose zikomoka ku mpanuka yagize y`akazi yo ku wa 23/11/2012 zirimo akaguru, urwasaya, gusimbura amenyo, indwara zo mu mutwe kuva aho agiriye impanuka y`akazi yo ku wa 23/11/2012, no kugurirwa imiti yose yandikiwe na Muganga kubera ubwo bumuga;

[61] Rutegetse RSSB guha Twagiramungu Eric indishyi zingana na 12.000.000Frw hakavanwamo 2.000.000Frw yahawe ategetswe n`uru Rukiko mu rubanza rubanziriza urundi rwaciwe ku wa 28/05/2019, ikanamuha 300.000Frw y`ikurikiranarubanza hamwe na 1.500.000Frw y`igihembo cya Avoka, yose hamwe akaba angana na 11.800.000Frw.