UMULINGA v NGIRINSHUTI N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00001/2021/SC (Ntezilyayo, P.J., Cyanzayire, Nyirinkwaya, Hitiyaremye na Karimunda, J., 17 Ukuboza 2021]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Igihe cyo gusubirishamo urubanza ku mpamvu z'akarengane igihe urubanza rwajuririwe ariko ubwo ubujurire ntibwakirwe – Icyo gihe gitangira kubarwa uhereye igihe Urukiko rwajuririrwe rwafatiye icyemezo cy'ukutakira ubujurire, kabone n'ubwo urubanza rusabirwa gusubirwamo rwaba ari urwajuririwe.

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Igihe cyo gushyikiriza ubusabe Urwego rw'Umuvunyi – N'ubwo Umushingamategeko nta bihe yateganyije, igihe cy'iminsi 30 cyo gushyikiriza Perezida w'Urukiko ubusabe bwo gusubirishamo urubanza ku mpamvu z'akarengane ari nacyo cyakurikizwa habarwa ibihe byo gushyikiriza ubusabe Urwego rw'Umuvunyi.

Amategeko agenga imanza mboneza mubano – Umutungo – Kugurisha ikintu cy'undi – Gukurikirana umutungo k'uwawuguze n'utari nyirawo – Gusubiza umuntu wagurishijwe n'utari nyirawo – Igurisha ry'umutungo w'undi ari imfabusa, nyirawo akaba afite uburenganzira bwo kuwukurikirana mu maboko y'uwufite bitabaye ngombwa gusaba ko amasezerano y'ubugure ateshwa agaciro, uwari uwufite akikurikiranira uwamugurishije.

Amategeko agenga amasezerano – Kugurisha ikintu cy'undi – Inkurikizi zo kugurisha ikintu cy'undi – Umuguzi uvukijwe ibyo yaguze asubizwa n'uwamugurishije agaciro kabyo ku munsi abivukijweho.

Facts: Umulinga na Muberuka bari barashakanye mu buryo bwemewe n'amategeko, baje guhabwa ubutane ariko hari imitungo bari bataragabana irimo ibibanza biherereye mu Murenge wa Nyamirambo, maze biza kugurishwa n'uwitwa Ngirinshuti Michel atabifitiye uburenganzira, abigurisha Nshimiyimana na Nsengiyumva.

Ngirinshuti yarezwe mu Rukiko Rwisumbuye rwa Nyarugenge, icyaha cyo kwihesha ibyangombwa bitangwa n'inzego zabugenewe mu buriganya n'icyaha cyo kugurisha ikintu cy'undi, maze MUBERUKA Jean Claude Bernard aregera indishyi muri urwo rubanza. Ku wa 23/12/2015, mu rubanza No RP 0356/15/TGI/NYGE, urwo Rukiko rwamuhamije ibyo byaha byombi runamutegeka gusubiza Muberuka na Umulinga amafaranga angana na 30.356.500 y'agaciro k'uwo mutungo. Umulinga Consilde yatambamiye urwo rubanza ku bijyanye n'indishyi, asaba gusubizwa umutungo aho guhabwa ingurane yawo, Urukiko rwemeza ko ikirego kitakiriwe. Yajuririye mu Rukiko Rukuru, rusanga ikirego cyaragombaga kwakirwa, rucyohereza mu Rukiko Rwisumbuye rwa Nyarugenge, narwo rugumishaho icyemezo cyafashwe mu rubanza No RP 0356/15/TGI/NYGE ku byerekeye indishyi. Umulinga Consilde yajuriye na none mu Rukiko Rukuru ruhamishaho urubanza rwajuririwe. Yajuririye kandi Urukiko rw'Ubujurire ariko rusanga ubujurire butari mu bubasha bwarwo kubera ko yatsinzwe kabiri ku mpamvu zimwe.

Umulinga yasubirishijemo urubanza ku mpamvu z'akarengane mu Rukiko rw'Ubujurire, ikirego nticyakirwa bituma yiyambaza Urwego rw'Umuvunyi asaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane. Nyuma yo gushyikirizwa dosiye n'Urwego rw'Umuvunyi, Urukiko rw'Ikirenga rwaburanishije urubanza, habanza kugibwa impaka ku kibazo cyo kumenya niba ubusabe bwarashyikirijwe Urwego rw'Umuvunyi impitagihe.

Hasuzumwe kandi ikibazo cyo kumenya niba Muberuka na Umulinga bagomba gusubizwa umutungo uburanwa aho guhabwa agaciro kawo, aho urega asaba gusubizwa uburenganzira ku mutungo asangiye na Muberuka, ngo kuko abawufite bawubonye bishingiye ku buriganya bw'uwawubahaye, kandi ko nyir'umutungo nawe awukeneye kugira ngo awubyaze umusarur, cyane cyane ko afite uburenganzira bwo gukurikirana umutungo we ku bawufite uyu munsi maze nabo bakikurikiranira uwubagurishije.

Abaregwa biregura bavuga ko uregwa atari akwiye kwanga amafaranga yagenwe n'Urukiko kuko urubanza rwayagennye rwabaye itegeko, kandi rukaba atari rwo yasubirishijemo ku mpamvu z'akarengane.

Held: 1. Igihe cy'iminsi 30 cyo gushyikiriza Perezida w'Urukiko ubusabe bwo gusubirishamo urubanza ku mpamvu z'akarengane ari nacyo cyakurikizwa habarwa ibihe byo gushyikiriza ubusabe Urwego rw'Umuvunyi, kuko icyari kigamijwe n'Umushingamategeko atari ukureka ngo umuburanyi azabikorere igihe ashakiye; rwanzura ko ubusabe bwatanzwe ku gihe.

2. Igurisha ry'umutungo w'undi ari imfabusa, nyirawo akaba afite uburenganzira bwo kuwukurikirana mu maboko y'uwufite bitabaye ngombwa gusaba ko amasezerano y'ubugure ateshwa agaciro, uwari uwufite akikurikiranira uwamugurishije.

3. Umuguzi uvukijwe ibyo yaguze asubizwa n'uwamugurishije agaciro kabyo ku munsi abivukijweho.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe.
Ngirinshuti agomba guha Muberuka amafaranga 15.178.250;
Nshimiyimana agomba gusubiza urega amafaranga 3.800.812;
Nsengiyumva agomba gusubiza uregwa igice kingana n'icya kabiri cy'ubutaka yaguze na Ngirinshuti;
Ngirinshuti agomba gusubiza Nshimiyimana amafaranga 3.800.812;
Ngirinshuti agomba guha Nsengiyumva 11.806.125 Frw ahwanye n'agaciro k'ubutaka bugomba gusubizwa uregwa;
Ngirinshuti agomba guha uregwa, Nshimiyimana na Nsengiyumva, buri wese amafaranga 800.000 akubiyemo ay'igihembo cy'avoka n'ay'ikurikiranarubanza.

Amategeko yashingiweho:
Itegeko N° 15/2004 ryo ku wa 12/06/2004
ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.
Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12, 111.
Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64, 113.

Imanza zifashishijwe:
Urubanza Mukaruhanga v Kold Hansen n'undi, n° RCAA 00045/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/05/2019.
Urubanza Twagirayezu V Twagirayezu n'abandi; RS/INJUST/RC 00007/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021.
Urubanza NIBASENGE v Nahayo; RCAA 0117/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/04/2015.

Urubanza

I. IMITERERE Y'URUBANZA

[1] UMULINGA Consilde na MUBERUKA Jean Claude Bernard bari barashakanye mu buryo bwemewe n'amategeko ku wa 26/04/1961 mu Rwanda, nyuma bagiye gutura mu gihugu cy'Ububiligi. Ku wa 17/06/1998, baje guhabwa ubutane n'Urukiko rwo muri icyo gihugu. UMULINGA Consilde avuga ko yari afitanye na MUBERUKA Jean Claude Bernard imitungo bari bataragabana irimo ibibanza biherereye mu Murenge wa Nyamirambo, maze biza kugurishwa n'uwitwa NGIRINSHUTI Michel, abigurisha NSHIMIYIMANA Augustin na NSENGIYUMVA Karim.

[2] NGIRINSHUTI Michel yaje gukurikiranwaho n'Ubushinjacyaha icyaha cyo kwihesha ibyangombwa bitangwa n'inzego zabugenewe mu buriganya n'icyaha cyo kugurisha ikintu cy'undi,

maze MUBERUKA Jean Claude Bernard aregera indishyi muri urwo rubanza. Ku wa 23/12/2015, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza No RP 0356/15/TGI/NYGE, ruhamya NGIRINSHUTI Michel ibyo byaha byombi, rumukatira igihano cy'igifungo cy'imyaka 7, runamutegeka kwishyura amafaranga 30,356,500 angana n'agaciro k'umutungo wa MUBERUKA Jean Claude Bernard na UMULINGA Consilde.

[3] UMULINGA Consilde yatambamiye urwo rubanza ku bijyanye n'indishyi, arega NGIRINSHUTI Michel na MUBERUKA Jean Claude Bernard, anarugobokeshamo NSHIMIYIMANA Augustin na NSENGIYUMVA Karim, avuga ko MUBERUKA Jean Claude Bernard yaregeye indishyi wenyine kuko atari kumuhagararira kandi baratandukanye, ko urukiko rutigeze ruvuga ku masezerano y'ubugure n'uburyo bagomba gusubirana umutungo wabo kandi batarigeze batuma NGIRINSHUTI Michel kuwubagurishiriza. Asaba Urukiko guhindura icyo cyemezo kuko kibangamiye inyungu ze n'uburenganzira yari afite ku mutungo we wagurishijwe n'utari nyirawo.

[4] Ku wa 31/07/2017, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza No RCA 00373/2016/TGI/NYGE, rwemeza ko ikirego cya UMULINGA Consilde kitakiriwe ngo gisuzumwe, rushingiye ku kuba ikirego cy'inshinjabyaha cyatanzwe mu Bugenzacyaha gitangiza urubanza No RP 0356/15/TGI/NYGE rutambamirwa cyaratanzwe n'UMULINGA Consilde afatanyije na MUBERUKA Jean Claude Bernard, ibyo bikaba ari ikimenyetso kigaragaza ko urubanza UMULINGA Consilde atambamira yari asanzwe aruzi.

[5] UMULINGA Consilde ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko Rukuru mu rubanza No RCA 00288/2017/HC/KIG. Ku wa 26/01/2018, Urukiko Rukuru rwaciye urubanza, rwemeza ko ubujurire bwa UMULINGA Consilde bufite ishingiro, ko ikirego cye cyo gutambamira urubanza RP 0356/15/TGI/NYGE no gutesha agaciro amasezerano y'ubugure ku mutungo afiteho uruhare gikwiye kwakirwa kigasuzumwa, rutegeka ko urubanza rwoherezwa mu Rukiko Rwisumbuye rwa Nyarugenge kugira ngo ruruburanishe ku rwego rwa mbere.

[6] Urukiko Rukuru rwafashe icyemezo rushingiye ku kuba mu gihe cy'iburanisha ry'urubanza rutambamirwa, UMULINGA Consilde yari yaratandukanye na MUBERUKA Jean Claude Bernard, ko rero uyu atari amuhagarariye muri urwo rubanza, kandi hakaba ntakigaragaza ko Ubushinjacyaha bujya kuregera dosiye bwabanje kubimenyesha UMULINGA Consilde kugira ngo amenye ko urwo rubanza ruhari.

[7] Urwo rubanza rwoherejwe mu Rukiko Rwisumbuye rwa Nyarugenge ruhabwa No RC 00133/2018/TGI/NYGE. Ku wa 22/03/2018, urukiko rwaciye urubanza rwemeza ko UMULINGA Consilde atsinzwe ku byerekeranye n'iseswa ry'amasezerano yasabaga, rutegeka ko ubugure bwabaye hagati ya NGIRINSHUTI Michel na NSHIMIYIMANA Augustin na NSENGIYUMVA Karim bugumyeho, rugumishaho urubanza No RP 0356/15/TGI/NYGE ku bijyanye n'ikirego cy'indishyi, ariko rutegeka ko NGIRINSHUTI Michel agomba guha UMULINGA Consilde 2.000.000 Frw yiyongera ku yo yategetswe mu rubanza rutambamirwa kuko yamugurishirije umutungo atamumenyesheje.

[8] Urukiko Rwisumbuye rwa Nyarugenge rwafashe icyemezo rushingiye ku kuba ababuranyi bose bemeranywa ko NGIRINSHUTI Michel ariwe wagurishije mu buryarya ariko NSHIMIYIMANA Augustin na NSENGIYUMVA Karim bo baguze na NGIRINSHUTI Michel abanje kubereka ibyangombwa bigaragaza ko ariwe nyir'umutungo (propriétaire apparent), rusobanura ko ku bw'ibyo amasezerano y'ubugure bagiranye atagomba guteshwa agaciro, ahubwo NGIRINSHUTI Michel agomba guha MUBERUKA Jean Claude Bernard na UMULINGA Consilde bari ba nyir'umutungo 30.356.500 Frw y'agaciro k'ubutaka nk'uko kari kagenwe mu rubanza rutambamirwa.

[9] UMULINGA Consilde yajuririye Urukiko Rukuru, atanga impamvu zikurikira:

- Kuba Urukiko rwarirengagije ingingo ya 276 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ivuga ko igurisha ry'ikintu cy'undi ari imfabusa, ko ibyo Urukiko rwemeje binyuranyije n'amategeko kuko bifatwa nk'igurisha ku gahato (*vente forcée);*

- Kuba Urukiko rwarirengagije ibimenyetso bitandukanye yatanze birimo imanza zaciwe n'inkiko zatanze umurongo ukwiye kugenderwaho, inyandiko yo muri 2009 ishinganisha umutungo**,** ibaruwa yanditswe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyamirambo, ibaruwa y'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda igaragaza uburyo NSHIMIYIMANA Augustin yibarujeho uwo mutungo;
- Kuba n'ubwo NGIRINSHUTI Michel ariwe wagurishije mu buryarya n'abaguze barabikoze mu buryarya.

[10] Ku wa 10/09/2018, Urukiko Rukuru rwaciye urubanza N˚ RCA 00123/2018/HC/KIG, rwemeza ko urubanza No RC 00133/2018/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rudahindutse mu ngingo zarwo zose.

[11] UMULINGA Consilde yajuririye na none urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwandikwa kuri N˚ RCAA 00068/2018/CA. Ku wa 29/05/2020, Urukiko rw'Ubujurire rwaciye urubanza, rwemeza ko ubujurire bwe butakiriwe kuko butari mu bubasha bwarwo kubera ko yatsinzwe mu Rukiko Rwisumbuye rwa Nyarugenge no mu Rukiko Rukuru ku mpamvu zimwe.

[12] UMULINGA Consilde yandikiye Perezida w'Urukiko rw'Ubujurire asaba gusubirishamo urubanza RCA 00123/2018/HC/KIG ku mpamvu z'akarengane, maze ku wa 17/09/2020 Perezida w'Urukiko rw'Ubujurire amusubiza ko ikirego cye kitagomba kwakirwa, kuko yiyambaje icyarimwe inzira ebyiri z'ubujurire.

[13] UMULINGA Consilde ntiyishimiye uwo mwanzuro, maze ku wa 29/09/2020 yandikira Urwego rw'Umuvunyi asaba gusubirishamo urubanza RCA 00123/2018/HC/KIG ku mpamvu z'akarengane, nawe amaze gusuzuma ubusabe bwe ku wa 04/11/2020, yandikira Perezida w'Urukiko rw'Ikirenga avuga ko urubanza rumaze kuvugwa rushobora kuba rwarabayemo akarengane, ko byasuzumwa hakemezwa niba rwasubirishwamo ku mpamvu z'akarengane.

[14] Ku wa 22/12/2020, Perezida w'Urukiko rw'Ikirenga mu cyemezo no 069/CJ/2020, yemeje ko urwo rubanza rwoherezwa mu bwanditsi bw'Urukiko rw'Ikirenga rukandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe.

[15] Urubanza rwaburanishijwe mu ruhame ku wa 09/09/2021, ababuranyi bitabye uretse MUBERUKA Jean Claude Bernard, wahamagajwe mu buryo bukurikije amategeko ntiyitabe. Naho UMULINGA Consilde yitabye yunganiwe na Me MUKARUSANGA Florence na Me KAGAMBA Christophe, NGIRINSHUTI Michel yunganiwe na Me NIYIBIZI Diogène, NSHIMIYIMANA Augustin yunganiwe na Me HABAKURAMA François Xavier, NSENGIYUMVA Karim yunganiwe na Me NDACYAYISENGA Schadrack.

[16] Me HABAKURAMA François Xavier yatanze inzitizi yo kutakira ikirego gisubirishamo urubanza N˚ RCA 00123/2018/HC/KIG ku mpamvu z'akarengane avuga ko UMULINGA Consilde atubahirije iminsi 30 iteganywa mu ngingo ya 56 y'Itegeko no 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, kuko urubanza N˚ RCA 00123/2018/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 10/9/2018, arujuririra mu Rukiko rw'Ubujurire, rucibwa ku wa 29/05/2020. Maze yandikira Perezida w'Urukiko rw'Ubujurire asaba kurusubirishamo ku mpamvu z'akarengane, nawe ku wa 17/09/2020 amusubiza ko ubusabe bwe butakiriwe kuko yiyambaje inzira ebyiri z'ubujurire, bituma ku wa 29/09/2020 UMULINGA Consilde yandikira Urwego rw'Umuvunyi asaba ko rusubirwamo ku mpamvu z'akarengane. Ku ruhande rwa UMULINGA Consilde bavuga ko yatanze ikirego asaba gusubirishamo urubanza ku mpamvu z'akarengane ku Rwego rw'Umuvunyi mu gihe giteganywa n'amategeko, rero ko iyo nzitizi nta shingiro ifite.

[17] Nyuma yo kumva ababuranyi kuri iyi ngingo, Urukiko rwafatiye icyemezo mu ntebe, rusanga igihe cy'iminsi 30 cyo gusaba ko urubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane kigomba kubarwa guhera ku itariki Urukiko rw'Ubujurire rwatangiyeho icyemezo cyo

kutakira ubujurire bwa kabiri hashingiwe ku mirongo yatanzwe n'Urukiko rw'Ikirenga mu zindi manza.[1] Rwasanze kandi, nubwo Umushingamategeko nta bihe yateganyije ku bijyanye no gushyikiriza ubusabe Urwego rw'Umuvunyi, igihe cy'iminsi 30 cyo gushyikiriza Perezida w'Urukiko ubusabe bwo gusubirishamo urubanza ku mpamvu z'akarengane ari nacyo cyakurikizwa, kuko icyari kigamijwe n'Umushingamategeko atari ukureka ngo umuburanyi azabikorere igihe ashakiye. Rwasanze urubanza N°RCA 0123/2018/HC/KIG rusabirwa gusubirishwamo ku mpamvu z'akarengane rwaraciwe n'Urukiko Rukuru ku wa 12/09/2018 maze UMULINGA Consilde arujuririra mu Rukiko rw'Ubujurire, rwandikwa kuri N° RCAA 00064/2018/CA rucibwa ku wa 29/05/2020, yongera kwandikira Perezida w'Urukiko rw'Ubujurire arusubirishamo nawe amusubiza ku wa 17/09/2020. Byumvikana neza ko ibihe by'iminsi 30 byo gutanga ikirego ku Rwego rw'Umuvunyi ari kuri iyo tariki ya nyuma bitangira kubarwa, kuba rero UMULINGA Consilde yaragitanze ku wa 29/09/2020, igihe cy'iminsi 30 cyarubahirijwe. Bityo inzitizi yatanzwe na NSHIMIYIMANA Augustin nta shingiro ifite.

[18] Iburanisha ryakomereje mu mizi y'urubanza. UMULINGA Consilde yasabye Urukiko kubaza abatangabuhamya KABANDA Eugène na MURINDA Fidèle kugira ngo batange amakuru ajyanye n'uburiganya bwabaye mu igurisha ry'ikibanza kiburanwa, naho abaregwa bavuga ko kubaza abatangabuhamya bitari ngombwa muri uru rubanza kuko no mu nkiko zabanje batabajijwe. Urukiko rushingiye ku buhamya bwabo batanze mu nyandiko, rwafashe icyemezo cyo kwakira indahiro zabo zemeza ubwo buhamya, kandi ababuranyi bemererwa kugira icyo babaza kuri ubwo buhamya. Nyuma yo kujya impaka ku kibazo cyo kumenya niba UMULINGA Consilde yaragombaga gusubizwa umutungo wagurishijwe na NGIRINSHUTI Michel aho gusubizwa agaciro kawo, iburanisha ryarapfundikiwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 08/10/2021.

[19] Mu mwiherero w'Urukiko, rwasanze mbere y'uko urubanza rucibwa burundu, rugomba kubanza kugera aho umutungo UMULINGA Consilde asaba gusubizwa uherereye, kugira ngo haboneke umucyo ku bibazo biri mu rubanza.

[20] Iperereza ryakozwe ku wa 25/10/2021, rikorerwa aho ikiburanwa giherereye mu Mudugudu wa Runyinya, Akagari ka Rugarama, Umurenge wa Nyamirambo, Akarere ka Nyarugenge, Umujyi wa Kigali. Iburanisha ry'urubanza ryasubukuwe ku wa 18/11/2021, ababuranyi bitabye kandi bunganiwe nk'ibisanzwe, uretse Muberuka Jean Claude Bernard utaritabye kandi yari yaramenyeshejwe itariki y'iburanisha. Kuri uwo munsi, ababuranyi bagiye impaka kuri raporo y'iperereza ryakozwe n'Urukiko.

[21] Ikibazo cy'ingenzi cyasuzumwe muri uru rubanza kijyanye no kumenya niba MUBERUKA Jean Claude Bernard na UMULINGA Consilde baragombaga gusubizwa umutungo wagurishijwe na NGIRINSHUTI Michel aho gusubizwa agaciro kawo.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Kumenya niba MUBERUKA Jean Claude Bernard na UMULINGA Consilde bagomba gusubizwa umutungo uburanwa aho guhabwa agaciro kawo

[22] Mu myanzuro no mu miburanire yabo imbere y'Urukiko, UMULINGA Consilde n'abunganizi be bavuga ko urubanza N° RP 0356/15/TGI/NYGE rwemeje ko NGIRINSHUTI Michel yagurishije umutungo w'undi akoresheje uburiganya, ko ariko Urukiko rwabambuye uburenganzira bwo gukoresha umutungo wabo uko babyumva kuko MUBERUKA Jean Claude Bernard yaregeye gusubizwa imitungo ye NGIRINSHUTI Michel yagurishije, ariko Urukiko rumugenera ingurane y'agaciro kabazwe n'umuhanga, bakaba basanga binyuranyije n'ibiteganywa n'Itegeko N° 43/2013 ryo ku wa 16/06/2013 ryagengaga ubutaka mu Rwanda igihe ikirego cyatangwaga, mu ngingo ya 34 igika cyayo cya 2.[2]

[23] UMULINGA Consilde asaba gusubizwa uburenganzira ku mutungo asangiye na MUBERUKA Jean Claude Bernard, ngo kuko abawufite bawubonye bishingiye ku buriganya bw'uwawubahaye, ko

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[1] Urugero ni nko mu rubanza N°RS/INJUST/RC 00011/2019/SC rwaciwe ku wa 12/02/2021, mu gika cya 36, haburana MUKAMUSONI Petronille na NKUNDIMANA Edison.

[2] Leta yishingira uburenganzira bwo gutunga ubutaka mu mudendezo kandi ikanarinda nyirabwo kubwamburwa ku maherere, bwaba bwose cyangwa igice cyabwo, keretse gusa mu gihe cyo kwimura abantu ku mpamvu z'inyungu rusange.

Urukiko rutari rukwiye kwirengagiza ko nyir'umutungo nawe awukeneye kugira ngo awubyaze umusaruro. Asobanura ko afite uburenganzira bwo gukurikirana umutungo we ku bawufite uyu munsi maze nabo bakikurikiranira NGIRINSHUTI Michel wawubagurishije azi neza ko atari uwe.

[24] Ku bijyanye n'ingurane y'amafaranga yemejwe n'Urukiko, UMULINGA Consilde n'abamwunganira basobanura ko raporo y'Ikigo Gishinzwe Imicungire n'Imikoreshereze y'Ubutaka mu Rwanda igaragaza ko ubwo butaka bwanditse kuri no 1860 ari bwa NSENGIYUMVA Karim kandi hakaba nta bikorwa birimo, ndetse ko bukwiye guhuzwa n'ikibanza n˚ 1861 bitewe n'uko ari bumwe kuva mu ntangiriro. Bakaba basanga kuba Urukiko rwaremeje ko ubutaka bugumana ababuguze kandi nta bikorwa bashyizeho ari ukwigwizaho umutungo (enrichissement sans cause), bakaba basaba Urukiko rw'Ikirenga kubikosora.

[25] Bavuga kandi ko iyo raporo ari ikimenyetso kigaragaza ko NSHIMIYIMANA Augustin na NSENGIYUMVA Karim babuguze mu buryo bw'uburyarya kuko NSENGIYUMVA Karim yabuguze na MBABAZI Felix mu mwaka wa 2011, ariko mu ihererekanyamutungo hagaragaramo NGIRINSHUTI Michel, uko kuvuguruzanya mu makuru bagasanga ari indi mpamvu ishimangira uburiganya bwabayeho, bikanashimangirwa no kuba NSHIMIYIMANA Augustin bigaragara ko yabanje kwandikisha mu Kigo cy'Ubutaka ko yarazwe ubwo butaka, ubundi akandika ko ari ubugure. Basaba Urukiko gusubiza UMULINGA Consilde ubutaka bwe, kuko kumuha ingurane yabwo bidafite ishingiro mu mategeko.

[26] Me MUKARUSANGA Florence wunganira UMULINGA Consilde avuga ko abaguze ubutaka babikoze bazi neza ko atari ubwa NGIRINSHUTI Michel kandi ko kugurisha ikintu cy'undi bitemewe. Akomeza avuga ko icyo ashingiraho yemeza ko NSENGUYIMVA Karim na NSHIMIYIMANA Augustin baguze ubutaka buburanwa mu buryarya ari uko ingano y'ubutaka bwanditse ku cyangombwa cya NSENGIYUMVA Karim usanga idahura na 25m/30 avuga yaguze na NGIRINSHUTI Michel, ariko mu kwisobanura akavuga ko ikindi gice yakiguze na MBABAZI Felix maze ahuriza ubwo butaka kuri nomero imwe bituma ubuso bwiyongera, nyamara atari ko byagenze, ahubwo ko bwari ubutaka bumwe inkomoko ari imwe babugabanyamo kabiri. Ikindi kandi uwo MBABAZI Felix nawe avuga ko yaguze n'uwitwa Jasmini nyamara uyu ntaho ahurira n'uyu mutungo.

[27] Me KAGAMBA Christophe na we wunganira UMULINGA Consilde yongeraho ko uyu yamenye ko hari expropriation igiye gukorwa asaba ababishinzwe kubihagarika ntibabikora, asaba Urukiko kuzasuzuma uwagombaga guhabwa ingurane kuko NSHIMIYIMANA Augustin yari yarihaye isambu. Akomeza avuga ko icyangombwa gifite UPI: 1/01/08/04/1635 kigaragaza ko isambu afite ingana na metero kare 2290, nyamara amasezerano y'ubugure akagaragaza metero kare 750, ashingira ku rubanza N˚ RCAA 0117/11/CS haburana NIBASENGE Anathalie na NAHAYO François Xavier rwaciwe n'Urukiko rw'Ikirenga asaba Urukiko gutegeka ko ubutaka bwose bubaruye kuri UPI: 1/01/08/04/1635 ari ubwa UMULINGA Consilde bitabaye ngombwa gusesa amasezerano y'ubugure kubera ko NSHIMIYIMANA Augustin nta kimenyetso agaragaza cyerekana inkomoko y'uwo mutungo wose, uretse kuvuga gusa ko yawuguze n'umukecuru utazwi.

[28] NGIRINSHUTI Michel na Me NIYIBIZI Diogène umwunganira biregura bavuga ko UMULINGA Consilde atari akwiye kwanga amafaranga 30.356.500 yagenwe n'Urukiko kuko urubanza rwayagennye rwabaye itegeko, kandi rukaba atari rwo yasubirishijemo ku mpamvu z'akarengane. Ikindi, bavuga ko gusubiza UMULINGA Consilde ubutaka bitashoboka kubera ko mu butaka bwagurishijwe hari ahakorewe expropriation n'Akarere ka Nyarugenge, kandi kakaba kataragobokeshejwe mu rubanza.

[29] NSENGIYUMVA Karim n'umwunganira bavuga ko umuzi w'ikibazo ari urubanza nshinjabyaha ruhamya NGIRINSHUTI Michel icyaha cyo kugurisha umutungo w'undi; basobanura ko aho NSENGIYUMVA Karim yaguze hari hafite UPI: 1/01/08/04/1861, anashyiramo ibikorwa nta buryarya nk'uko Urukiko rwabyemeje. Basobanura ko mu bujurire basanze hafite indi nomero irimo UPI: 1/01/08/04/1860 nyamara icyo gice ari aho yaguze na MBABAZI Felix.

[30] Basobanura ko UMULINGA Consilde yandikiye Ikigo Gishinzwe Imicungire n'Imikoreshereze y'Ubutaka mu Rwanda kugira ngo babereke isano y'ubwo butaka, bamuha igisubizo ko ikibanza n°1860 cyegeranye n'ikibanza n°1861 kandi ko byose byanditse kuri NSENGIYUMVA Karim, ko kimwe kidakomoka ku kindi n'imyaka bwaguriwemo itandukanye kuko yaguze na MBABAZI Felix mu mwaka wa 2011, ikindi akigura na NGIRINSHUTI Michel mu mwaka wa 2014, aha hakaba hatanubatse ahubwo ari ishyamba.

[31] Me HABAKURAMA François Xavier uhagarariye NSHIMIYIMANA Augustin, avuga ko ikitabujijwe kiba cyemewe, ko ahubwo UMULINGA Consilde yagaragaza icyo ahomba mu kuba atarahawe ubutaka, agahabwa agaciro kabwo mu mafaranga, kuko ibi babishingiye ku kuba abaguze barabikoze nta buryarya, dore ko n'ubwo butaka atari ubutaka yari atuyemo kuko n'ubundi yari amaze imyaka irenga 15 mu Gihugu cy'Ububiligi ari naho havuye ko NGIRINSHUTI Michel abugurisha kuko nta nyirabwo bwagiraga, kandi ubwo butaka bukaba buri mu manga, ko asanga ahubwo UMULINGA Consilde yafata amafaranga yabwo akagura ahantu heza.

[32] Anavuga ko urubanza rwaciwe hashingiwe kuri théorie de l'apparence, kandi ko atari umwihariko w'urubanza N° RC 0133/2018/TGI/NYGE cyangwa N° RCA 0123/2018/HC/KIG kuko n'Urukiko rw'Ikirenga ruyikoresha mu kurengera abaguze nta buryarya. Atanga urugero rw'urubanza N° RCOMA 0002/2013/CS rwaciwe ku wa 23/10/2015 haburana KOBIL PETROLEUM RWANDA SARL na GARAJE AUTO IMPERIAL hakagobokamo MUKAREMERA Francine, aho Urukiko rw'Ikirenga rwemeje ko MUKAREMERA Francine atamburwa Petrol Station kuko yayiguze nta buryarya kubera ko atari azi ibibazo byabaye mbere, bityo rero ko aya masezerano ataseswa, ahubwo UMULINGA Consilde yakwishyurwa na NGIRINSHUTI Michel bafitanye amasano kandi wabahemukiye.

[33] Asobanura kandi ko ibyo UMULINGA Consilde asaba byo gusubizwa ubutaka bitashoboka kuko iyo sambu avuga yamaze gukorerwa expropriation n'Akarere ka Nyarugenge, ko kandi amafaranga yishyuwe muri expropriation atahabwa UMULINGA Consilde kuko ibikorwa byashyizwemo na NSHIMIYIMANA Augustin.

UKO URUKIKO RUBIBONA

[34] Kugirango Urukiko rubashe gusubiza ku kibazo cyo kumenya niba MUBERUKA Jean Claude Bernard na UMULINGA Consilde bagomba gusubizwa umutungo uburanwa aho guhabwa agaciro kawo, ni ngombwa kubanza gusuzuma ibibazo bikurikira :

- Kumenya ubutaka bwaburanywe mu rubanza N° RP 0356/15/TGI/NYGE, ari narwo iki kirego gishingiyeho;
- Kumenya niba amasezerano y'ubugure yabaye hagati ya NGIRINSHUTI Michel, NSENGIYUMVA Karim na NSHIMIYIMANA Augustin yarakozwe mu buriganya ;
- Kumenya niba NSENGIYUMVA Karim na NSHIMIYIMANA Augustin bakwiye gusubiza umutungo baguze na NGIRINSHUTI Michel

B. Ku bijyanye no kumenya ubutaka bwaburanywe mu rubanza N° RP 0356/15/TGI/NYGE

[35] Dosiye y'urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane igaragaza ko urubanza N° RCA 00123/2018/HC/KIG rukomoka ku gutambamira urubanza No RP 0356/15/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 23/12/2015, rwahamije NGIRINSHUTI Michel icyaha cyo kwihesha ku buriganya ibyemezo bitangwa n'inzego zabugenewe ndetse n'icyaha cyo kugurisha imitungo itari iye, rumuhanisha igifungo cy'imyaka irindwi, runamutegeka guha MUBERUKA Jean Claude Bernard na UMULINGA Consilde amafaranga 30.356.500 ahwanye n'agaciro k'ubutaka bwabo yagurishije n'indishyi z'ikurikiranarubanza.

[36] Dosiye igaragaza kandi ko icyaha cyo kwihesha ku buriganya ibyemezo bitangwa n'inzego zabugenewe ndetse n'icyaha cyo kugurisha imitungo itari iye NGIRINSHUTI Michel yahamijwe bikomoka ku kuba yaragurishije NSENGIYUMVA Karim ubutaka bubaruye kuri UPI: 1/01/08/04/1861

buherereye mu Mudugudu wa Runyinya, Akagali ka Rugarama, mu Murenge wa Nyamirambo, Akarere ka Nyarugenge n'ikibanza gifite UPI: 1/01/08/04/1635, n'uburebure bwa 25m/30m yagurishije NSHIMIYIMANA Augustin.

[37] Ibyo kandi binashimangirwa no kuba ku wa 27/8/2014 Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyamirambo NKURUNZIZA Alexis yarandikiye Umuyobozi wa Polisi mu Karere ka Nyarugenge, amusaba gukurikirana NGIRINSHUTI Michel kubera kugurisha ikibanza gifite UPI: 1/01/08/04/1635 cyaguzwe na NSHIMIYIMANA Augustin n'ishyamba ryaguzwe na NSENGIYUMVA Karim.

[38] Urukiko rurasanga rero umutungo waburanyweho mu rubanza rw'inshinjabyaha ari ufite UPI: 1/01/08/04/1861, ugizwe n'ishyamba NGIRINSHUTI Michel yagurishije NSENGIYUMVA Karim ku wa 27/02/2014 na UPI: 1/01/08/04/1635, ufite ubuso bwa 750 metero kare (25 x30 m), NSHYIMIYIMANA Augustin yaguze na NGIRINSHUTI Michel.

[39] Urukiko rurasanga mu iburanisha ry'uru rubanza ndetse no mu iperereza Urukiko rwakoreye aho ikuburanwa giherereye, UMULINGA Consilde yarakomeje kwerekana ko umutungo aburana urenze imbibi z'uwaburanyweho mu rubanza rw'inshinjabyaha nk'uko wagaragajwe mu gika kibanza. Urukiko rusanga, mu gusuzuma iki kibazo, rugomba kureba gusa umutungo waburanyweho mu rubanza rw'inshinjabyaha kuko ari narwo rwafashwemo icyemezo cy'imbonezamubano UMULINGA Consilde yatambamiye, kugeza ubwo atanga ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko Rukuru.

[40] Urukiko rurasanga kuba mu rubanza nshinjabyaha rukomokaho urwasabiwe gusubirwamo ku mpamvu z'akarengane, MUBERUKA Jean Claude Bernard cyangwa UMULINGA Consilde batarigeze bagaragariza Urukiko ikibazo cy'ingano y'ibibanza NGIRINSHUTI Michel yagurishije NSENGIYUMVA Karim na NSHIMIYIMANA Augustin, byumvikanisha ko bitaburanyweho bityo UMULINGA Consilde akaba atavuga ko Urukiko rwabimurenganyijeho.

[41] Kutaburanisha bwa mbere mu rwego rw'akarengane ikitaraburanyweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ni nawo murongo wafashwe n'Urukiko rw'Ikirenga mu rubanza GAHIRE Athanase yaburanaga na MUKARUSHAKIRO Gloriose na bagenzi be, aho rwemeje ko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze agaragariza Umucamanza ngo amusabe kugisuzuma.[3]

C. Kumenya niba amasezerano y'ubugure yabaye hagati ya NGIRINSHUTI Michel, NSENGIYUMVA Karim na NSHIMIYIMANA Augustin yarakozwe mu buriganya.

[42] Mu bimenyetso UMULINGA Consilde ashingiraho avuga ko NSHIMIYIMANA Augustin na NSENGIYUMVA Karim baguze ubutaka buburanwa mu buryo bw'uburyarya, harimo kuba hari itandukaniro ry'ubuso bw'ubutaka bwanditse ku byangombwa n'ubwanditse mu masezerano y'ubugure yabaye hagati ya NSENGIYUMVA Karim na NGIRINSHUTI Michel no kuba NSENGIYUMVA Karim aburanisha ko yabuguze na MBABAZI Felix mu mwaka wa 2011, ariko mu ihererekanyamutungo hakaba hagaragaramo NGIRINSHUTI Michel gusa. Naho kuri NSHIMIYIMANA Augustin, ubwo buriganya asobanura ko bugaragarira mu kuba yarabanje kwandikisha mu Kigo gishinzwe imikoreshereze n'imicungire y'ubutaka ko yarazwe ubwo butaka, ubundi akandika ko ari ubugure.

[43] Ingingo ya 3, igika cya mbere, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana." Ibivugwa muri iyo ngingo bihura n'ibiteganywa n'ingingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda."

[3] Urubanza n° RS/INJUST/RC 00008/2019/SC haburana GAHIRE Athanase na MUKARUSHAKIRO Gloriose na bagenzi be, rwaciwe kuwa 12/11/2021, urupapuro rwa 14, igika cya 30.

[44] Ibyerekeye ubuso bw'ubutaka NGIRINSHUTI Michel yagurishije NSHIMIYIMANA Augustin n'ubwo yagurishije NSENGIYUMVA Karim, yakurikiranyweho mu rubanza rw'inshinjabyaha ari narwo rwakomotseho ikirego cy'imbonezamubano UMULINGA Consilde yatanze, byasobanuwe mu gusuzuma ingingo ya mbere y'uru rubanza. Ubundi butaka UMULINGA Consilde avuga burimo n'ubwo NSENGIYUMVA Karim avuga ko yaguze na MBABAZI Felix, cyangwa ubwo NSHIMIYIMANA Augustin avuga ko yongeye ku bwo yari yaguze na NGIRINSHUTI Michel, ariko bwose UMULINGA Consilde akavuga ko bugize umutungo we aburana, bukaba butaraburanyweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, bityo Urukiko rukaba ntaho rwahera rugira icyemezo rubifataho kuri uru rwego.

[45] Ku kibazo cyerekeranye n'uko NSHIMIYIMANA Augustin yaba yarabanje kwandikisha mu Kigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda ko ubutaka yaburazwe, ubundi akandika ko bukomoka ku bugure, mu iburanisha ryo ku wa 18/11/2021, NSHIMIYIMANA Augustin yari yitabiriye ubwe, yavuze ko ubutaka buvugwa abukomora ku bugure, ko iby'uko bwaba bukomoka ku irage atazi aho byaturutse. Ikigaragarira Urukiko ni uko hari amasezerano yemeza ko ubwo butaka bukomoka ku bugure, NGIRINSHUTI Michel wabugurishije akaba abihamya, n'Urukiko Rwisumbuye rwa Nyarugenge rukaba rwarabyemeje rutyo mu rubanza No RP 0356/15/TGI/NYGE; iby'uko bwaba bukomoka ku irage bikaba bigaragara nko kwibeshya mu kwandika ku cyangombwa.

[46] Urukiko rusanga kandi NSENGIYUMVA Karim na NSHIMIYIMANA Augustin baraguze na NGIRINSHUTI Michel abereka ko ari nyiri umutungo, akabereka ibyangombwa byatanzwe n'inzego zibifitiye ububasha. Byumvikane rero ko ingingo ya 35, igika cya 2 y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda UMULINGA Consilde ashingiraho itakurikizwa.[4]

[47] Kubera impamvu zose zimaze gusobanurwa, Urukiko rurasanga nta kimenyetso UMULINGA Consilde yagaragaje cyerekana ko amasezerano y'ubugure yabaye hagati ya NGIRINSHUTI Michel, NSENGIYUMVA Karim na NSHIMIYIMANA Augustin yakozwe mu buriganya.

D. Kumenya niba NSENGIYUMVA Karim na NSHIMIYIMANA Augustin bakwiye gusubiza umutungo baguze na NGIRINSHUTI Michel

[48] UMULINGA Consilde asaba ko amasezerano y'ubugure yabaye hagati ya NSENGIYUMVA Karim, NSHIMIYIMANA Augustin, na NGIRINSHUTI Michel yaseswa, agasubirana umutungo asangiye na MUBERUKA Jean Claude Bernard. Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye, akaba yaseswa ari uko abayagiranye babyumvikanyeho cyangwa ku zindi mpamvu zemewe n'amategeko. Naho ingingo ya 113, igika cya mbere y'iryo Tegeko iteganya ko amasezerano agira inkurikizi hagati y'abayagiranye gusa, akaba atabangamira undi cyangwa ngo amugirire akamaro hejuru y'ibyayateganyijwemo bimufitiye akamaro.

[49] Urukiko rusanga UMULINGA Consilde adashobora gusaba ko amasezerano atabayemo ateshwa agaciro, ariko akaba afite uburenganzira bwo gukurikirana umutungo avuga ko ari uwe ku wo awusanganye. Ikibazo kijyanye n'uburenganzira bwo gukurikirana umutungo utimukanwa ku wo uwusanganye bitabaye ngombwa gusaba ko amasezerano y'ubugure ateshwa agaciro, cyasuzumwe n'uru Rukiko mu manza zitandukanye, nko mu rubanza MUKARUHANGA Alexia yaburanaga na NYIRAHABIMANA Emertha na KOLD HANSEN Jesper. Muri uru rubanza, Urukiko rwasobanuye ko atari ngombwa ko habanza kubaho gutesha agaciro amasezerano y'ubugure bw'ikintu cy'undi kugirango nyiracyo ashobore kuregera kukigaruza.[5]

[50] Urukiko rusanga, kuba NSENGIYUMVA Karim na NSHIMIYIMANA Augustin baraguze umutungo utimukanwa na NGIRINSHUTI Michel, utari nyir'umutungo w'ukuri, byumvikana ko bagomba kuwusubiza ba nyirawo, ariko NGIRINSHUTI Michel wabaguriShije iyo mitungo

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[4] …..Icyakora, ntibibujije ko umuntu ashobora gutunga inyubako, ibihingwa n'ibindi bikorwa ku butaka bw'undi muntu mu gihe bikurikije iri tegeko, andi mategeko cyangwa amasezerano na nyir'ubutaka.

[5] Reba urubanza n° RCAA 00045/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/05/2019, kuva ku bika bya 25 kugeza ku cya 34.

akabasubiza agaciro kayo.[6] Ariko kubera ko MUBERUKA Jean Claude Bernard yemeye imikirize y'urubanza N° RP 0356/TGI/NYGE rwategetse ko we n'UMULINGA Consilde bagomba guhabwa na NGIRINSHUTI Michel amafaranga 30.35.,500 Frw, UMULINGA Consilde we agahitamo indi nzira itambamira imikirize y'urubanza, NGIRINSHUTI Michel azishyura MUBERUKA Jean Claude Bernard 15.178.250 Frw.

[51] Urukiko rusanga ku byerekeye isambu yaguzwe na NSHIMIYIMANA Augustin ibaruye kuri UPI: 1/01/08/04/1635[7] nk'uko byagarutsweho haruguru yakorewe expropriation n'Akarere ka Nyarugenge, NSHIMIYIMANA Augustin agomba gusubiza UMULINGA Consilde kimwe cya kabiri cy'agaciro yahawe muri expropriation y'aho yari yaguze na NGIRINSHUTI Michel hangana na (25m/30m)(sqm 750). Bisobanura (20,666,286 frw ÷ 2,039 sqm) × 750sqm=7,601,625 frw ÷2 = 3.800.812 Frw. Ibyo bivuze ko ayo mafaranga ari nayo NGIRINSHUTI Michel agomba gusubiza NSHIMIYIMANA Augustin.

[52] Urukiko rusanga ku byerekeye umutungo ufite UPI: 1/01/08/04/1861 waguzwe na NSENGIYUMVA Karim, UMULINGA Consilde agomba gusubizwa kimwe cya kabiri cy'uwo mutungo, ikindi gice cyagombaga guhabwa MUBERUKA Jean Claude Bernard kikaguma mu maboko ya NSENGIYUMVA Karim, kuko MUBERUKA Jean Claude Bernard atigeze ajuririra urubanza N° RP 0356/15/TGI/NGE nk'uko byagarutsweho haruguru. NSENGIYUMVA Karim, nk'uko byagaragariye Urukiko mu gihe cy'iperereza, ntacyo yongeye kuri ubwo butaka, bityo akaba agomba gusubizwa na NGIRINSHUTI Michel agaciro k'icyo gice cy'ubwo butaka buzasubizwa UMULINGA Consilde, kabazwe hashingiwe ku biciro fatizo by'ubutaka mu Rwanda bya 2021.[8] Ni ukuvuga ko kuri 750 sqm, hakoreshejwe Weighted Average Value per sqm, agaciro k'ubutaka kaba 31.483 Frw x 750 = 23.612.250 Frw, bivuze ko NGIRINSHUTI Michel yasubiza NSENGIYUMVA Karim icya kabiri cy'aka gaciro gihwanye na 11.806.125 Frw.

E. Kumenya niba indishyi ababuranyi basaba bakwiye kuzihabwa

[53] UMULINGA Consilde n'abunganizi be bavuga ko yavukijwe uburenganzira ku mutungo we, ubu akaba amaze imyaka igera kuri irindwi (7) awukurikirana mu manza zamuteje igihombo, kuko yagiye akora ingendo ziva zikanajya mu gihugu cy'Ububiligi, akagera mu Rwanda akishyura icumbi rimuhenze, akishyura amazi n'amashanyarazi, ndetse n'ibiribwa bijyanye no kuba arwaye *diabete*, agatanga n'amafaranga yo kwivuza igihe ari mu Rwanda kuko mu Bubiligi ho yivuriza ubuntu. Ibyo abisabira indishyi zihwanye na miliyoni cumi n'eshanu (15.000.000 Frw). Ibimenyetso bashingiraho bikaba ari *factures* z'amazi n'amashanyarazi na *factures* z'imiti no kwivuza.

[54] Bakomeza bavuga ko kubera gushorwa mu manza nta mpamvu, UMULINGA Consilde asaba amafaranga miliyoni eshatu (3.000.000 frw) y'ikurikiranarubanza, zishingiye ku gushaka inyandiko, kuzifotoza, kwandikira no gukurikirana iki kibazo mu nkiko zitandukanye, kwandikira no gushaka ibisubizo mu nzego z'ubuyobozi, gutega *taxi voiture* uko avuye mu rugo, akanasaba gusubizwa igihembo cya Avoka kingana na miliyoni eshanu (5.000.000 frw).

[55] NGIRINSHUTI Michel n'umwunganizi we bavuga ko basanga UMULINGA Consilde nta ndishyi agomba guhabwa kuko nta karengane kari muri uru rubanza. Basaba Urukiko ahubwo kuzategeka UMULINGA Consilde kwishyura NGIRINSHUTI Michel indishyi z'akababaro zingana na 2.000.000 Frw kubera kumusiragiza mu manza nta mpamvu.

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[6] Uru Rukiko rwafashe icyemezo gisa n'iki mu Rubanza RS/INJUST/RC 00007/2020/SC haburana TWAGIRAYEZU Alice na TWAGIRAYEZU Alphonsine na bagenzi be rwaciwe ku wa 10/12/2021, igika cya 40 na 41; Urubanza RCAA 0117/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/04/2015 haburana NIBASENGE Anathalie na Nahayo Francois Xavier.

[7] Nk'uko byasobanuwe, UPI: 1/01/08/04/1835 ibaruweho isambu NSHIMIYIMANA Augustin yaguze na NGIRINSHUTI Michel yari ifite metero kare 750, ukongeraho indi sambu yahuje nayo bibyara isambu ifite ubuso bungana na metero kare 2,039 nk'uko bigaragara ku cyangombwa cy'umutungo.

[8] Reba Ibiciro Fatizo by'Ubutaka mu Rwanda 2021, byateguwe n'Urugaga rw'Abagenagaciro ku Mutungo Utumikanwa mu Rwanda (IRPV), Official Gazette No. Special of 01/12/2021, p. 192. Urukiko rurakoresha Weighted Average Value per sqm.

[56] NSENGIYUMVA Karim n'umwunganizi we nabo bavuga ko basanga nta ndishyi UMULINGA Consilde akwiye guhabwa kuko ariwe wishoye mu manza zidafite ishingiro, ahubwo ko ariwe ugomba guha NSENGIYUMVA Karim indishyi z'akababaro zingana na 2.000. 000 Frw kubera kumushora mu manza z'amaherere, akamuha 500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza.

[57] Me HABAKURAMA François Xavier uhagarariye NSHIMIYIMANA Augustin avuga ko indishyi UMULINGA Consilde asaba nta shingiro zifite, ko ahubwo hashingiwe ku ngingo ya 111 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, UMULINGA Consilde yategekwa kwishyura NSHIMIYIMANA Augustin 1.500.000 Frw y'igihembo cya Avoka kuri uru rwego na 500.000 Frw y'ikurikiranarubanza ku bwo gukomeza kumusiragiza mu nkiko.

UKO URUKIKO RUBIBONA

[58] Ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe."

[59] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza UMULINGA Consilde, NSENGIYUMVA Karim na NSHIMIYIMANA Augustin basaba bagomba kuyahabwa kuko byabaye ngombwa gukurikirana urubanza bitewe no kuba NGIRINSHUTI Michel yaragurishije uwo mutungo azi neza ko ari uwa MUBERUKA Jean Claude Bernard na UMULINGA Consilde, bikaba ngombwa gushaka ababunganira. Icyakora kubera ko ayo basaba ari umurengera, mu bushishozi bw'Urukiko bakaba bagenewe buri wese 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw kuri buri wese, agatangwa na NGIRINSHUTI Michel.

[60] Urukiko rurasanga kandi, ruhereye ku bisobanuro UMULINGA Consilde atanga asaba amafaranga 15.000.000, ayo mafaranga atayagenerwa kuko ibimenyetso atanga bitagaragaza ko ibyo asaba byakoreshejwe koko mu ikurikirana ry'uru rubanza.

[61] Ku bijyanye n'indishyi zingana na 2.000.000 Frw zo gushorwa mu manza zasabwe na NSENGIYUMVA Karim, ndetse n'indishyi zingana nk'izo NGIRINSHUTI Michel yasabye, Urukiko rurasanga batagomba kuzihabwa kubera ko ataribo batanze ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane. Ikindi kandi ni uko NGIRINSHUTI Michel we nta n'icyo atsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[62] Rwemeje ko ikirego cyatanzwe na UMULINGA Consilde asaba gusubirishamo ku mpamvu z'akarengane urubanza No RCA 00123/2018/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 10/09/2018 rukemeza ko nta gihindutse ku mikirize y'urubanza No RP 0356/15/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 23/12/2015, gifite ishingiro kuri bimwe;

[63] Rwemeje ko imikirize y'urubanza No RP 0356/15/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 23/12/2015 ihindutse ku bijyanye n'ibyo NGIRINSHUTI Michel agomba gusubiza;

[64] Rutegetse NGIRINSHUTI Michel guha MUBERUKA Jean Claude Bernard amafaranga 15.178.250;

[65] Rutegetse NSHIMIYIMANA Augustin gusubiza UMULINGA Consilde amafaranga 3.800.812;

[66] Rutegetse NSENGIYUMVA Karim gusubiza UMULINGA Consilde igice kingana n'icya kabiri cy'ubutaka UPI:1/01/08/04/1861 yaguze na NGIRINSHUTI Michel;

[67] Rutegetse NGIRINSHUTI Michel gusubiza NSHIMIYIMANA Augustin amafaranga 3.800.812;

[68] Rutegetse NGIRINSHUTI Michel guha NSENGIYUMVA Karim 11.806.125 Frw ahwanye n'agaciro k'ubutaka bugomba gusubizwa UMULINGA Consilde;

[69] Rutegetse NGIRINSHUTI Michel guha UMULINGA Consilde, NSHIMIYIMANA Augustin na NSENGIYUMVA Karim, buri wese amafaranga 800.000 akubiyemo ay'igihembo cy'avoka n'ay'ikurikiranarubanza.