MUHAWENAYO v NSEKEYUKUNZE

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00005/2018/SC (Rugege, P.J., Kayitesi, Mutashya, J.) 18 Mutarama 2019]

Amategeko agenga imanza z'imbonezamubano – Amasezerano – Kugura no kugurisha – Kwishingira inenge z'ikigurishijwe – Inenge zihishe – Umugurisha yishingira inenge zihishe z'icyo agurishije n'iyo yaba atari azizi zituma kitakoreshwa icyo cyagenewe cyangwa zatuma imikoreshereze yacyo igabanuka ku buryo umuguzi atashoboraga kukigura cyangwa se yashoboraga kugitangaho amafaranga make iyo aza kuzimenya, keretse iyo byavuzwe ko nta bwishingire na busa agomba.

Incamake y'ikibazo: Ku wa 09/04/2018 Muhawenayo yaguze na Nsekeyukunze inka arayitwara ariko ayigeje mu rugo itangira kurwara uburwayi bwo kuzana amagara hanyuma ku wa 13/04/2013 arayimugarurira avuga ko yayimugurishije kandi azi ko irwaye, umuyobozi w'Akagari abikorera raporo. Nsekeyukunze yaje kugumana iyo nka aranayivuza iza no gukira. Muhawenayo yatanze ikirego mu Rukiko Rwibanze asaba ko yasubizwa amafaranga yatanze kuko yagurishijwe inka irwaye. Urukiko rwemeje ko yasubizwa amafaranga yayiguze ariko uregwa ntiyanyurwa ajurira mu Rukiko Rwisumbuye rwa Rusizi avuga ko Urukiko Rwibanze rutahaye agaciro ubuhamya bwatanzwe n'abaganga b'amatungo bemeje ko iyo nka ari ubwa mbere yari irwaye indwara yo kuzana amagara kandi ko ari uburwayi buvurwa bugakira. Urukiko rwisumbuye rweje ko ubwo bujurire bufite ishingiro maze rutegeka Muhawenayo guha Nsekeyunze indishyi zitandukanye. Muhawenayo yandikiye Urwego rw'Umuvunyi asaba kurenganurwa narwo rurwohereza Perezida w'Urukiko rw'Ikirenga rusaba ko rwasubirwamo ku mpamvu z'akarengane, amaze kubisuzuma, Uurkiko rw'Ikirenga ruburanisha uru rubanza.

Mu iburanisha, hasuzumwe ikibazo cyo kumenya niba inka Nsekeyukunze yagurishije Muhawenayo yari ifite uburwayi bwafatwa nk'inenge ihishe yari gutuma amasezerano y'ubugure aseswa. Urega avuga ko urukiko rwirengagije inenge zihishe z'uburwayi iyo nka yari ifite kandi yarabigaragaje ndetse n'ibimenyetso bigaragaza ko iyo nka mbere y'uko igurishwa yari ifite uburwayi butagaragara, akaba asanga iyo ari inenge yihishe igomba kwishingirwa n'umugurisha kuko iyo aza kumenya ko ifite icyo kibazo atari kuyigura. Akomeza asaba ko yasubizwa amafaranga yayiguze. Uregwa asobanura ko nta kimemenyetso kigaragaza inenge ihishe cyagaragajwe na Muhawenayo uretse amagambo gusa, ko inenge igomba kuba yaremejwe n'abahanga mu kuvura amatungo. Akomeza avuga ko iyo nka yayigurishije nta kibazo ifite bityo akaba asanga ntaho Urukiko rwari guhera rwemeza ko ifite inenge.

Incamake y'icyemezo: Umugurisha yishingira inenge zihishe z'icyo agurishije n'iyo yaba atari azizi zituma kitakoreshwa icyo cyagenewe cyangwa zatuma imikoreshereze yacyo igabanuka ku buryo umuguzi atashoboraga kukigura cyangwa se yashoboraga kugitangaho amafaranga make iyo aza kuzimenya, keretse iyo byavuzwe ko nta bwishingire na busa agomba. Kubwo ibyo rero, ibyo Nsekeyukunze avuga nta shingiro bifite kuko inka yagurishije yari ifite inenge y'uburwayi yari isanganwe bityo akaba agomba kwishingira iyo nenge.

Ikirego cy'akarengane gifite ishingiro kuri byose.

Amategeko yashingiweho:
Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65.

Amategeko yifashishijwe atagikoreshwa:
Itegeko ryo ku wa 30 Nyakanga 1988 ryerekeye Urwunge rw'amategeko, ingingo ya 318, 320.

Nta manza zifashishijwe

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uwitwa Muhawenayo Jean Pierre yaguze na Nsekeyukunze Innocent inka ku mafaranga 405.000Frw kuwa 09/04/2014, arayitwara. Muhawenayo Jean Pierre yasubije iyo nka Nsekeyukunze kuwa 13/04/2014, amubwira ko ifite uburwayi bwo kuzana amagara, ko kandi yayimugurishije abizi. Kuri uwo munsi, umukuru w'umudugudu yabikoreye raporo ndetse n'Umuyobozi w'Akagari nawe abikorera raporo kuwa 07/05/2014, Nsekeyukunze Innocent yagumanye iyo nka arayivuza kugeza kuwa 11/05/2015, akavuga ko yakoresheje amafaranga 218.000Frw kugira ngo ikire.

[2] Muhawenayo Jean Pierre yareze Nsekeyukunze Innocent mu Rukiko rw'Ibanze rwa Kagano (ntirwatangiriye mu Bunzi kuko ababuranyi badatuye mu Kagari kamwe), asaba gusubizwa amafaranga 405.000Frw kuko yamugurishije inka ifite uburwayi bwo kuzana amagara kandi we yarayiguze atabizi.

[3] Nsekeyukunze Innocent avuga ko yayimugurishije ari nzima, ikaba yararwariye kwa Muhawenayo Jean Pierre, ariko ko yayimugaruriye akayigumana nk'uyicumbikiye, akayivuza kugeza ikize akoresheje amafaranga 218.000Frw, asaba ko Muhawenayo Jean Pierre yasubirana inka ye akamusubiza amafaranga yakoresheje ayivuza.

[4] Urukiko rwaciye urubanza RC0103/14/TB/KAG ku wa 07/08/2014, rwemeza ko ikirego cyatanzwe na Muhawenayo Jean Pierre gifite ishingiro; rwemeza ko inka Muhawenayo Jean Pierre yaguze na Nsekeyukunze Innocent yari ifite uburwayi bwo kuzana amagara, bukaba ari inenge itumye amasezerano y'ubugure aseswa; rutegeka Nsekeyukunze Innocent guha Muhawenayo Jean Pierre amafaranga 460.000Frw, akayamuha ku neza kuva urubanza rumaze kuba ndakuka, atayatanga agakukurwa mu bye ku ngufu za Leta; rwemeje ko amafaranga y'amagarama y'urubanza 25.000Frw Muhawenayo Jean Pierre yatanze arega, ahuye n`ibyakozwe mu rubanza.

[5] Nsekeyukunze Innocent yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Rusizi, avuga ko Urukiko rubanza rutahaye agaciro ubuhamya bwatanzwe na Véterinaire Willy n'uwitwa Hitimana Agustin, bemeje ko iyo nka ari ubwa mbere yari irwaye iyo ndwara yo kuzana amagara, anavuga ko Urukiko rwemeje ko iyo nka yagurishijwe ifite inenge ihishe kandi abaganga b'amatungo baremeje ko ari indwara ivurwa igakira, asoza avuga ko indi mpamvu ye y'ubujurire ishingiye ku kuba Urukiko rutarahaye agaciro igihe cy'iminsi 3 iyo nka yamaze kwa Muhawenayo

Jean Pierre, kuko yayiguze agahita ayijyana kuwa 09/04/2014, akayigarura kuwa 13/04/2014 ari mu ijoro, akayita mu rugo kwa Nsekeyukunze, ntawe ayeretse.

[6] Urukiko rwaciye urubanza RCA0101/14/TGI/RSZ ku wa 28/11/2014 rwemeza ko urubanza RC0103/14/TB/KAG rwaciwe n'Urukiko rw'Ibanze rwa Kagano ku wa 07/08/2014, ruhindutse kuri byose; rwemeje kandi rutegeka Muhawenayo Jean Pierre guha Nsekeyukunze Innocent indishyi z'amafaranga y'u Rwanda Miliyoni imwe n'ibihumbi Magana abiri (1.200.000 Frw); rutegeka kandi Muhawenayo Jean Pierre gusubiza Nsekeyukunze Innocent 50.000Frw yatanzweho ingwate y'amagarama y'urubanza kimwe n'andi yategetswe yose, atayamuha abyibwirije mu gihe urubanza rubaye itegeko, agakurwa mu mitungo ye ku ngufu za Leta. Icyo cyemezo nticyanyuze Muhawenayo Jean Pierre, bituma yandikira Urwego rw'Umuvunyi, asaba ko urwo rubanza rwasubirwamo akarenganurwa. Umuvunyi yohereje Perezida w'Urukiko rw'Ikirenga urwo rubanza, nawe amaze kubona raporo y'Ubugenzuzi Bukuru bw'Inkiko ategeka ko ruzaburanishwa.

[7] Ku wa 18/12/2018, Urukiko rw'Ikirenga rwaburanishije uru rubanza, Muhawenayo Jean Pierre yitabye yunganiwe na Me Habanimfura Michel, Nsekeyukunze Innocent yitabye ahagarariwe na Me Niyitegeka Eraste.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURO RYABYO.

1. Kumenya niba inka Nsekeyukunze Innocent yagurishije Muhawenayo Jean Pierre yari ifite uburwayi bwafatwa nk'inenge ihishe yari gutuma amasezerano y'ubugure aseswa.

[8] Me Habanimfura Michel avuga ko akarengane muri uru rubanza gashingiye ku kuba Urukiko Rwisumbuye rwa Rusizi rwarirengagije ibiteganywa n'Itegeko ryo ku wa 30 Nyakanga 1988 ryerekeye Urwunge rw'amategeko y'imbonezamubano ku byerekeye imirimo nshinganwa cyane ingingo zaryo za 302, 318, 320, 321, 323 na 325 zerekeye inenge ihishe.

[9] Me Habanimfura Michel anagaragaza ko Urukiko Rwisumbuye rwa Rusizi mu guca urubanza RCA0101/14/TGI/RSZ rwirengagije ibimenyetso bikubiyemo ubuhamya bwa Tugirumuremyi Willy yavugiye mu Rukiko rw'Ibanze rwa Kagano, nyuma yo kurahira nk'uko amategeko abiteganya, akavuga ko inka Muhawenayo Jean Pierre yaguze na Nsekeyukunze Innocent yazanye amagara kuri kiriya gihe yavuze, ndetse mu buhamya bwe akanongeraho ko iyo ndwara yo kuzana amagara ibanzirizwa na ``durée d'incubation`` imara ibyumweru bibiri, akaba asanga iyo Urukiko Rwisumbuye ruza kuba rwarabihaye agaciro, ruba rwarabonye mu buryo budashidikanywaho ko iyo nka yayiguze ifite ubwo burwayi ariyo nenge ihishe.

[10] Me Habanimfura Michel uburanira Muhawenayo Jean Pierre anavuga ko akarengane kanashingiye ku kuba Urukiko Rwisumbuye rwa Rusizi, rwaranze kubaza abatangabuhamya barimo Ntagara Joël (umuturanyi wa Nsekeyukunze Innocent yari yasabye kumushakira umukiriya kuko yari azi uburwayi bw'iyo nka) na Njamahoro Elias (umworozi wari wararangiye Nsekeyukunze Innocent umuvuzi gakondo w'iyo nka mbere y'uko Muhawenayo Jean Pierre ayigura. Abo batangabuhamya ngo bakaba barahejwe, ariko birangira batabajijwe kandi nyamara bazi neza ukuri kw'ubwo burwayi iyo nka yari ifite.

[11] Me Niyitegeka Eraste mu kwiregura agaragaza ko urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane rushingiye ku cyitwa inenge ihishe y`uburwayi bw'inka yaguzwe na Muhawenayo Jean Pierre, ayigurishijwe na Nsekeyukunze Innocent, avuga ko nta kimemenyetso kigaragaza inenge ihishe cyagaragajwe na Muhawenayo Jean Pierre, ko iyo nenge itari kuvugwa mu magambo, ko ahubwo yagombaga kuba yaremejwe n'Abahanga mu kuvura amatungo, bikanemezwa n'ibigo bya ``laboratoire``, akaba asanga ntaho Urukiko rwari guhera rwemeza iyo nenge.

[12] Me Niyitegeka Eraste akomeza avuga ko ibyo bavuga ko hirengagijwe imvugo ya Veterineri ataribyo kuko uwo bavuga nta byangombwa afite byo gupima inka, akaba ataranize amashuri asabwa kugirango abe yagira iyo ``titre``, avuga ko uwo Veterineri ari umuntu ufite ubumenyi bucye bwo mu giturage ku burwayi bw'amatungo, akaba nta mpamyabumenyi (diplome) abifitiye, nta miti atanga, nta n'ibyemezo byo gukora uwo mwuga agira, asaba Urukiko rw'Ikirenga kudashingira ku mvugo ze.

[13] Me Niyitegeka Eraste anavuga ko atemeranya na Muhawenayo Jean Pierre ko inka yaguze na Nsekeyukunze Innocent yari ifite uburwayi bwo kuzana amagara, ahubwo ngo yayimugurishije ihaka, nyuma Muhawenayo Jean Pierre ayizana yararamburuye, Nsekeyukunze Innocent akaba mu gihe yayisubizwaga yarayivuje.

UKO URUKIKO RUBIBONA

[14] Mu kwemeza ko inka Muhawenayo Jean Pierre yaguze na Nsekeyukunze nta nenge y'uburwayi bwo kuzana amagara yarifite, Urukiko Rwisumbuye rwa Rusizi rwabishingiye ku kuba nta bimenyetso byemewe n'amategeko Muhawenayo Jean Pierre yatanze, byemeza ko uburwayi iyo nka yari ibufite mbere y'uko igurwa, runashingira ku kuba abemeje ko iyo nka yari ifite uburwayi bwo kuzana amagara atari abavuzi mu by'ubworozi bemewe na Leta.

[15] Ku birebana n`uru rubanza, Urukiko rw'Ikirenga rusanga kuba Muhawenayo Jean Pierre yaraguze inka na Nsekeyukunze Innocent, nyuma y'igihe gito ikagira uburwayi, akayisubiza nyirayo akayakira, akayivuza kugeza ikize, bigaragaza ko nka nyirayo (Nsekeyukunze Innocent) yari azi uburwayi bwayo; iby`uko ubwo burwayi yari ibusanganywe bikaba byaraje no kwemezwa n'abatangabuhamya babajijwe barimo uwitwa Twagirumwami Willy, wari veternaire wemeje ko iyo nka yari ifite ikibazo cyo kuzana amagara, ndetse bikanashimangirwa na Hitimana Augustin, umuvuzi wa gihanga wavuye iyo nka kugeza ikize.

[16] Urukiko rusanga rero iyo nenge yihishe ari impamvu yari gutuma amasezerano y`ubugure bw`iyo nka Muhawenayo Jean Pierre yagiranye na Nsekeyukunze Innocent aseswa, hashingiwe ku biteganywa n`ingingo ya 318 y'Itegeko ryo ku wa 30 Nyakanga 1988 ivuga ko ``Umugurisha agomba kwishingira inenge zihishe z'icyo agurishije zituma kitakoreshwa icyo cyagenewe cyangwa zatuma imikoreshereze yacyo igabanuka ku buryo umuguzi atashoboraga kukigura cyangwa se yashoboraga kugitangaho amafaranga make iyo aza kuzimenya``, kuko ayigura itagaragazaga ko ifite uburwayi kandi yarashaga inka izamwororokera bikaba bitari bigishobotse.

[17] N`ubwo Nsekeyukunze atari kuba azi ko iyo nka ye irwaye, ariko ubwo burwayi bukaba bwaragaragaye yaraye igurishijwe, kandi uwayiguze azi ko aguze inka nzima, Urukiko rusanga nabyo byari kuba impamvu y`inege ihishe yagombaga gutuma ayo masezerano y`ubugure bwayo

aseswa, hashingiwe ku biteganywa n`ingingo ya 320 y'Itegeko ryo ku wa 30 Nyakanga 1988 rivuzwe haruguru iteganya ko ``Umugurisha yishingira inenge zihishe niyo yaba atari azizi keretse iyo byavuzwe ko nta bwishingire na busa agomba`, mu masezerano y`ubugure Muhawenayo Jean Pierre yagiranye na Nsekeyukunze Innocent bakaba ntacyo bavuze ku by`ubwishingire.

[18] Urukiko rusanga ibyemejwe n'Urukiko Rwisumbuye rwa Rusizi ko inenge y`iyo nka yagombaga kugaragazwa n'Umuhanga mu byubuvuzi bw'amatungo nta shingiro ifite kuko ubuhamya bw`ababajijwe butateshwa agaciro mu gihe baje muri urwo rubanza nk'abatangabuhamya, hashingiwe ku nbiteganywa n`ingingo ya 65 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ``Urukiko arirwo rugomba gusuzuma niba imvugo z`abatangabuhamya zihuje n'ikiburanwa, zifite ingingo zikiranuye kandi ikaba zikwiye kwemerwa cyangwa guhakanwa``, bityo rukaba rwarasanze imvugo zabo zihagije kugira ngo ukuri kumenyekane, hakaba nta mpamvu yo kwitabaza Umuhanga mu by'amatungo.

[19] Urukiko rusanga ibivugwa na Nsekeyukunze Innocent ko mu gihe yagurishije Muhawenayo Jean Pierre inka ye ihaka, nyuma ikaza kuramburura, ko ari nabwo burwayi yayivuje nta shingiro bifite, kuko nta kimenyetso abigaragariza uretse gusa kubivuga mu magambo. Nyamara mu Rukiko rw`Ibanze rwa Kagano, icyo gihe yemeraga ko iyo nka yagiraga ubwo burwayi, ariko akavuga ko itari ikiri iye ko yagombaga kuvuzwa na Muhawenayo wari wayiguze.

[20] Urukiko rw'Ikirenga rukaba rusanga Muhawenayo Jean Pierre imikirize y`urubanza N° RCA 0101/14/TGI/RSZ yaramuteye akarengane, aho Urukiko rwamutegetse guha Nsekeyukunze Innocent indishyi zingana na 1.200.000 Frw rwirengagije ko yamugurishije inka irwaye kuzana amagara, bityo urwo rubanza rukaba rugomba kuvanwaho.

2. Kumenya ingano y'amafaranga Muhawenayo Jean Pierre agomba gusubizwa, n'indishyi agomba guhabwa.

[21] Me Habanimfura Michel asaba ko Nsekeyukunze Innocent yasubiza Muhawenayo Jean Pierre amafaranga yakiriye mu irangizwa ry'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rusizi angana na 1.291.500 Frw, akamuha indishyi z'akababaro no kumusiragiza akurikirana dosiye, zose hamwe zingana na 1.500.000 Frw, akanamuha 1.500.000 Frw y'igihembo cya avoka.

[22] Me Niyitegeka Eraste avuga ko indishyi Nsekeyukunze Innocent asabwa kwishyura nta shingiro ryazo, kuko ikirego kidafite ishingiro kimwe nuko nta gihembo cya Avoka gikwiye gutangwa, kuko biregura basanze ikirego cyaratanzwe mu izina rya Muhawenayo Jean Pierre, ngo akaba nta kimenyetso agaragaza cy'uko amafaranga asaba yayatakaje.

UKO URUKIKO RUBIBONA

[23] Urukiko rw'Ikirenga rusanga kuba hari amafaranga Muhawenayo Jean Pierre yahaye Nsekeyukunze Innocent mu rwego rwo kurangiza urubanza RCA 0101/14/TGI/RSZ n`andi yose yatanzwe mu kurangiza urwo rubanza, agomba kuyamusubiza, kubera ko Urukiko rwasanze urwo rubanza rugomba kuvanwaho, bityo akaba agomba kuyamusubiza yose uko angana na 1.291.500 Frw hakubiyemo n'amafaranga yaguzwe inka iburanwa.

[24] Urukiko rw'Ikirenga rusanga indishyi z'akababaro n'izo gusiragizwa mu manza zisabwa na Muhawenayo Jean Pierre zifite ishingiro kuko, Nsekeyukunze Innocent yamubabaje amugurisha inka irwaye kandi we yarashakaga iyo kworora, umushinga we ukaba utarakozwe nk'uko yari yabitekereje, anasiragira mu Nkiko baburana, ibyo bikaba byatuma agenerwa indishyi[1]. ko kuba izo asaba ari nyinshi, mu bushishozi bw'Urukiko, yagenerwa izingana na 300.000 Frw hamwe na 200.000 Frw y'ikurikiranarubanza.

[25] Urukiko rusanga Muhawenayo Jean Pierre yaraburanye uru rubanza yunganiwe na Me Habanimfura Michel, mu bushishozi bw`Urukiko, akaba agomba kugenerwa amafaranga y`igihembo cya Avoka angana na 500.000 Frw, kuko ayo asaba ari menshi.

III. ICYEMEZO CY'URUKIKO

[26] Rwemeye kwakira no gusuzuma ikirego cy'akarengane cya Muhawenayo Jean Pierre, rusanga gifite ishingiro kuri byose;

[27] Rwemeje ko imikirize y'urubanza N° RCA 0101/14/TGI/RSZ rwaciwe n'Urukiko Rwisumbuye rwa Rusizi ku wa 28/11/2014, ivanyweho;

[28] Rwemeje ko hagumyeho imikirize y'urubanza RC0103/14/TB/KG rwaciwe n'Urukiko rw'Ibanze rwa Kagano ku wa 07/08/2014, ariko hakaba hahindutse ibijyanye n'amafaranga yagenewe Muhawenayo Jean Pierre muri urwo rubanza;

[29] Rutegetse Nsekeyukunze Innocent gusubiza Muhawenayo Jean Pierre amafaranga yose yaciwe mu irangiza ry'urubanza N° RCA 0101/14/TGI/RSZ rwaciwe n'Urukiko Rwisumbuye rwa Rusizi ku wa 28/11/2014, angana na 1.291.500 Frw, akanamuha indishyi z'akababaro zingana na 300.000 Frw, iz'ikurikiranarubanza zingana na 200.000 Frw n'ayigihembo cya avoka angana na 500.000Frw, yose hamwe akaba agomba kumuha angana na 2.291.500 Frw.

[1] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge mbonezamubano, iteganya ko nyirigukora igikorwa cyangirije undi ategekwa gusana ibyangijwe.