

RWANDA / JUDGMENT

# NIYIGENA vs LETA Y'URWANDA (MINADEF)

RADAA00008/2024

COURT

Court of Appeal

DECIDED

24 January 2025

CASE / FILE NUMBER

RADAA00008/2024

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

## NIYIGENA vs LETA Y'URWANDA (MINADEF)

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2025-01-24
- Case/document no.: RADAA00008/2024
- Collection: Court of Appeal

### Text

#### Page 1

NIYIGENA vs LETA Y'URWANDA (MINADEF) [Rwanda URUKIKO RW'UBUJURIRE – RADAA00008/2024 (Munyangeri., P.J., Rutazana na Kamere J.) 24 Mutarama 2025] Amategeko mbonezamubano – Itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange – kutumvikana ku ndishyi zihabwa uwimurwa – igihe cyo kuregera indishyi – Ikirego gikomoka ku kutemeranya ku igenagaciro ryakozwe ku mutungo utangirwa indishyi kubera kwimurwa ku mpamvu z'inyungu rusange, gitangwa mu minsi cumi n'itanu, ibarwa uhereye igihe utishimiye igenagaciro yashyize umukono ku nyandikomvugo yo kutemeranywa ku igenagaciro. Incamake y'ikibazo: Uru rubanza rwatangiye Niyigena arega Leta y'uRwanda (MINADEF) mu Rukiko Rwisumbuye rwa Nyarugenge, arusaba gutegeka MINADEF kwishyura indishyi zikwiye kubera kwimurwa mu mutungo we ku mpamvu z'inyungu rusange, zigizwe n'ikinyuranyo mu igenagaciro kingana n'amafaranga miliyoni ijana na mirongo itanu n'icyenda, ibihumbi magana ane na mirongo ine na bibiri na magana atatu na cumi (159,442,310 Frw), gikomoka ku igenagaciro ryakoreshejwe n'uwiguruzagenagaciro ryakoreshejwe na Niyigena

n'inyungu zayo . Umutungo yaregeye ufite UPI: 01/03/04/03/1850, ufite ubuso bungana na sqm ibihumbi bine na magana atandatu na makumyabiri n'enye (4,624 sqm), uherereye mu Murenge wa Kagarama, mu Karere ka Kicukiro. Ku bijyanye n'urubanza mu mizi, MINADEF ivuga ko amafaranga ahwanye n'agaciro k'uwo mutungo yamaze kuyishyura, angana na miliyoni mirongo itanu n'esheshatu, ibihumbi magana inani na cumi na bitandatu, na magana atandatu na mirongo icyenda (56,816,690Frw). Urukiko mu rubanza RAD00162/2021/TGI/NYGE rushingiye ku ngingo ya 3, iya 12, iya 111 z'itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ku ngingo ya 3 y'itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ryakoreshwaga igihe Niyigena yaregaga, rwemeje ko, inzitizi yatanze na MINADEF nta shingiro ifite, ko MINADEF iha Niyigena ikinyuranyo ku ndishyi zikwiye yahawe ku kibanza cye zingana na 69,999,000Frw; rumugera n'indishyi zitandukanye. MINADEF yajuririye urwo rubanza mu Rukiko Rukuru, inenga ko mu rubanza rujuririrwa, Urukiko rwirengagije inzitizi yo kutakira ikirego; ko rwarashingiye icyemezo cyarwo ku mpapuro z'ubugure uwimuwe atigeze agaragariza MINADEF mu gihe cyo kwimurwa, ngo anagaragaze ko habaye ihererekanya ry'ubwo butaka. Niyigena yireguye avuga ko iyo mpamvu y'ubujurire nta shingiro ifite kuko umutungo asabira indishyi z'ingurane ikwiye ari uwe. Yatanze ubujurire bwuririye ku bwa MINADEF anenga Urukiko Rwisumbuye kuba rwarategetse ko ahabwa indishyi ikwiye hagendewe ku mafaranga yaguze ubutaka, aho kwita no ku bikorwa yahakoreye no ku gaciro kabwo kuri uyu muni. Urukiko mu rubanza RADAA00025/2022/HC/KIG rwaciye, rushingiye ku ngingo ya 33 n'ya 34 z'itegeko N°32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, rwemeje ko, ubujurire bwa Leta y'u Rwanda, bufite ishingiro; rutegeka Niyigena guha MINADEF amafaranga y'igihembo cya Avoka. Niyigena yajuririye urwo rubanza mu Rukiko rw'Ubujurire asaba Urukiko gusuzuma niba urwego rwimura rwarashyize umukono ku nyandikomvugo y'ibitarumvikanyweho kugira ngo abe ari yo iherwaho habarwa iminsi cumi n'itanu (15) yo gutanga ikirego mu Rukiko, basozza basaba guhabwa indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

## Page 2

MINADEF yireguye avuga ko ubwo bujurire nta shingiro bufite. Nayo isaba guhabwa amafaranga y'igihembo cya Avoka. Urukiko mu rubanza RADAA00008/2024 rwemeje ko ubujurire bwa Niyigena nta shingiro bufite, kuko yatanze ikirego yaregeye ibihe biteganyijwe n'amategeko. Incamake y'icyemezo: Ikirego gikomoka ku kutemeranya ku igenagaciro ryakozwe ku mutungo utangirwa indishyi kubera kwimurwa ku mpamvu z'inyungu rusange, gitangwa mu minsi cumi n'itanu, ibarwa uherye igihe utishimiye igenagaciro yashyize umukono ku nyandikomvugo yo kutemeranywa ku igenagaciro. Bityo, ntabwo iminsi cumi n'itanu ibarwa uherye igihe inyandikomvugo yo kutemeranywa ku igenagaciro ishyirirweho umukono nushaka kwimura ku nyungu rusange. Ubujurire nta shingiro bufite. Amategeko yashyirirweho: Itegeko N° 32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, Ingingo ya 33,34 Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, Ingingo ya 111 Nta manza

zifashishijwe. Urubanza. I. IMITERERE Y'URUBANZA [1] Niyigena Eraste avuga ko Karasanyi Joseph na Umuganwa Rose bamugurishije ibice bitandukanye by'ubutaka bwabo bwari bubaruye kuri UPI: 1/03/04/03/1600, ko ubwo butaka bwaje guhuzwa buhabwa UPI: 01/03/04/03/1850 bufite ubuso bungana na sqm ibihumbi bine na magana atandatu na makumyabiri n'enye (4,624 sqm), mu gihe yari atarakorerwa ihererekanyamutungo, MINADEF igira umushinga wo kwimura abantu ku mpamvu z'inyungu rusange, abamugurishije bamuha uburenganzira (procuration) bwo kuzahabwa indishyi y'ingurane ikwiye ijyanye n'igice cy'ubutaka yaguze. [2] Akomeza avuga ko igikorwa cyo kubarura umutungo no kuwaha agaciro cyatangiyeye uwo mutungo ukibaruye kuri UPI: 1/03/04/03/1600, ko ariko mu kwezi kwa Mata/2015, umugenagaciro wa MINADEF yakozwe igenagaciro ry'igice cy'umutungo yaguze, raporo ye igaragaza ko gifite agaciro k'amafaranga miliyoni mirongo itanu n'esheshatu, ibihumbi magana inani na cumi na bitandatu, na magana atandatu na mirongo icyenda (56,816,690Frw), ntiyishimira ako gaciro, ashaka umugenagaciro witwa Talent Contractors Ltd wo gukora raporo mvuguruzagaciro (contre-expertise), agaragaza ko umutungo we ufite agaciro k'amafaranga miliyoni magana abiri na cumi n'esheshatu n'ibihumbi magana abiri na mirongo itandatu na bitanu (216,265,000Frw). [3] Avuga ko yashyikirije MINADEF raporo mvuguruzagaciro kugira ngo imwishyure agaciro nyakuri k'umutungo we ntiyagira icyo ibikoraho, ayisaba kubahiriza ibiteganywa n'ingingo ya 34 y'itegeko N° 32/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange. Avuga ko abahanga b'impane zombi bateranye bagakora inyandikomvugo y'ibitemeranywaho, bakayishyiraho umukono ku wa 06/05/2016, igashyikirizwa MINADEF kugira ngo iyishyireho umukono ibe yanakwishyura ikinyuranyo cy'izo raporo z'igenagaciro zombi, ariko ikaba itarongeye gushyira ahagaragara iyo nyandikomvugo y'ibitemeranywaho.

### Page 3

- [4] Niyigena Eraste yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, arusaba gutegeka MINADEF kwishyura indishyi ikwiye kubera kwimurwa ku mpamvu z'inyungu rusange, igizwe n'ikinyuranyo mu igenagaciro kingana n'amafaranga miliyoni ijana na mirongo itanu n'icyenda, ibihumbi magana ane na mirongo ine na bibiri na magana atatu na cumi (159,442,310 Frw), n'inyungu zingana n'amafaranga miliyoni icumi, ibihumbi magana inani na mirongo itatu na kimwe na magana abiri na mirongo itanu (10,831,250Frw). [5] Uhagarariye MINADEF yatanze inzitizi yo kutakira ikirego cya Niyigena Eraste, avuga ko nta nyungu n'ububasha afite bwo kurega kuko umutungo asabira indishyi atari uwe, ahubwo ari uwa Karasanyi Joseph na Umuganwa Rose, ari na bo bimwe mu mutungo ubaruye kuri UPI: 01/03/04/03/1850, ufite ubuso bungana na sqm ibihumbi bine na magana atandatu na makumyabiri n'enye (4,624 sqm), bakaba barahawe amafaranga miliyoni mirongo itanu n'esheshatu, ibihumbi magana inani na cumi na bitandatu na magana atandatu na mirongo icyenda ( 56,816,690Frw), yashyizwe kuri konti n° 364140096411 ku wa 14/07/2016 ifunguye muri Bank of Africa, iri ku mazina ya Niyigena Eraste bari bahaye procuration ku wa 02/11/2015, bamwemerera kwakira amafaranga bahawe ku kibanza cyabo, Niyigena Eraste akaba ari we wabikuje ayo mafaranga. [6] Ku birebana n'urubanza mu mizi, uhagarariye MINADEF yireguye avuga ko amafaranga ahwanye n'agaciro k'uwo mutungo yamaze

kuyishyura. [7] Mu rubanza RAD00162/2021/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 28/02/2022, urwo Rukiko rushingiye ku ngingo ya 3, iya 12, iya 111 z'itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ku ngingo ya 3 y'itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ryakoreshwaga igihe Niyigena Eraste yaregaga, rwemeje ko: Inzitizi yo kutakira ikirego cya Niyigena Eraste Minisiteri y'Ingabo (MINADEF) yatanze, nta shingiro ifite; Ikirego cya Niyigena Eraste gifite ishingiro; Minisiteri y'Ingabo (MINADEF) iha Niyigena Eraste ikinyuranyo ku ndishyi zikwiye yahawe ku gice cy'ikibanza yaguze ku gifite UPI: 1/03/04/03/1600 (cyahawe UPI: 1/03/04/03/1850 ku buso bungana na sqm 4,624) buherereye mu Kagari ka Rukatsa, Umurenge wa Kagarama, Akarere ka Kicukiro, Umujyi wa Kigali na 5% y'ihungabana zingana n'amafaranga miliyoni mirongo itandatu n'icyenda n'ibihumbi magana acyenda na mirongo icyenda n'icyenda (69,999,000Frw); Minisiteri y'Ingabo (MINADEF) iha Niyigena Eraste indishyi z'akababaro n'amafaranga yatanzwe ku mugenagaciro, angana n'amafaranga miliyoni eshanu (5,000,000Frw); Minisiteri y'Ingabo (MINADEF) iha Niyigena Eraste amafaranga miliyoni imwe n'ibihumbi makumyabiri (1,020,000Frw) akubiyemo amafaranga y'ikurikiranarubanza, igihembo cya Avoka n'ingwate y'amagarama. [8] Minadef yajuririye urwo rubanza mu Rukiko Rukuru, inenga Urukiko Rwisumbuye rwa Nyarugenge kuba : Rwarirengagije inzitizi yo kutakira ikirego ; Rutaritaye ku miburanire yayo yagaragazaga ko Karasanyi Joseph na Umuganwa Rose bimwe, batigeze bavuguruza agaciro kahawe ubutaka bwabo mbere y'uko bimurwa; Rwarashingiye icyemezo cyarwo ku mpapuro z'ubugure uwimuwe atigeze agaragariza MINADEF mu gihe cyo kwimurwa, ngo anagaragaze ko habaye ihererekanya ry'ubwo butaka.

## Page 4

- [9] Niyigena Eraste yireguye avuga ko iyo mpamvu y'ubujurire nta shingiro ifite ngo kubera ko umutungo asabira indishyi y'ingurane ikwiye ari uwe. Yasabye Urukiko gutumiza Karasanyi Joseph na Umuganwa Rose kugira ngo barusobanurire ko bamugurishije ubutaka asabira indishyi. Yatanze ubujurire bwuririye ku bwa MINADEF anenga Urukiko Rwisumbuye kuba : Rwarategetse ko ahabwa indishyi ikwiye hagendewe ku mafaranga yaguze ubutaka, aho kwita no ku bikorwa yahakoreye no ku gaciro kabwo kuri uyu muni. [10] Mu rubanza RADA00025/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 09/02/2024, urwo Rukiko rushingiye ku ngingo ya 33 n'ya 34 z'itegeko N°32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, rwemeje ko: Ubujurire bwa Leta y'u Rwanda, bufite ishingiro; Ubujurire bwa Niyigena Eraste, nta shingiro bufite; Imikirize y'urubanza rwajuririwe ihindutse kuri byose; Amafaranga miliyoni mirongo itandatu n'icyenda n'ibihumbi magana acyenda na mirongo icyenda n'icyenda (69,999,000Frw) y'ingurane y'ubutaka UPI: 1/03/04/03/1850 n'ibikorwa byariho, amafaranga miliyoni eshanu (5,000,000Frw) y'indishyi z'akababaro n'amafaranga miliyoni imwe n'ibihumbi makumyabiri (1,020,000Frw) akubiyemo amafaranga y'ikurikiranarubanza, igihembo cya Avoka n'ingwate y'amagarama Minisiteri Y'ingabo (MINADEF) yategetswe guha Niyigena Eraste, nta yo

igomba kumuha kubera impamvu zasobanuwe haruguru; NIYIGENA Eraste aha Minisiteri y'Ingabo (MINADEF) amafaranga miliyoni imwe (1,000,000Frw) y'igihembo cya Avoka. [11] Niyigena Eraste yajuririye urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa RADAA00008/2024/CA, maze nyuma y'imihango ntegururubanza yose, ababuranyi bamenyeshwa ko ruzaburanishwa ku wa 06/09/2024, uwo munsu iburanisha ryimurirwa ku wa 25/09/2024 kubera izindi gahunda z'urukiko. [12] Uwo munsu ababuranyi bitabye Urukiko, urubanza ruburanishwa mu ruhamwe Niyigena Eraste yunganiwe na Me Bayingana Janvier, MINADEF ihagarariwe na Me Cyubahiro Fiat. [13] Mu myanzuro no mu miburanire, Niyigena Eraste n'umwunganira basabye Urukiko gusuzuma niba ku wa 06/05/2016, urwego rwimura rwarashyize umukono ku nyandikomvugo y'ibitarumvikanyweho kugira ngo abe ari yo iherwaho habarwa iminsi cumi n'itanu (15) yo gutanga ikirego mu Rukiko, basaza basaba guhabwa indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [14] Uhagarariye MINADEF yireguye avuga ko ubwo bujurire nta shingiro bufite. Asoza asaba guhabwa amafaranga y'igihembo cya Avoka. [15] Nyuma y'izo mpaka, harasuzumwa ibibazo bikurikira : Kumenya niba Niyigena Eraste yaragombaga kubara ibihe byo kuregera urukiko ahereye ku itariki yashyiriyeho umukono ku nyandikomvugo y'ikinyuranyo cya raporo z'igenagaciro yo ku wa 06/05/2016; Ibyerekeye indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

## Page 5

Kumenya niba NIYIGENA Eraste yaragombaga kubara ibihe byo kuregera urukiko ahereye ku itariki yashyiriyeho umukono ku nyandikomvugo y'ikinyuranyo cya raporo z'igenagaciro yo ku wa 06/05/2016. [16] Niyigena Eraste n'umwunganira bavuga ko Urukiko Rukuru rwirengagije ko yakoze ibiteganywa n'ingingo ya 33 n'ya 34 z'itegeko N° 32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, ndetse ko kugeza ubu MINADEF itarashyira umukono ku nyandikomvugo y'ibitaremeranyijweho, nyamara umwanzuro wafashwe n'urwego rwimura ari wo yagombaga guheraho abara iminsi cumi n'itanu (15) ngo abe yaregera Urukiko. Bavuga ko kuba Urukiko Rukuru rwaravuze ko yagombaga kuregera Urukiko mu gihe cy'iminsi cumi n'itanu (15) ibarwa uhereye ku wa 06/05/2016, umunsi yashyiriye umukono kuri iyo nyandikomvugo, asanga rwaravugishije ingingo ya 34 y'itegeko n° 32/2015 ryo ku wa 11/06/2015 ryavuzwe haruguru ibyo itavuga kandi ko habayeho kwitiranya umugenagaciro wa MINADEF na MINADEF ubwayo, mu gihe itegeko riteganywa ko inyandikomvugo y'ibitaremeranyijweho ishyirwaho umukono n'urwego rwimura n'umugenagaciro warwo ku ruhande rumwe, n'uwimurwa n'umugenagaciro we ku rundi ruhande, ko rero atari kurega MINADEF itaragaragaza umwanzuro wayo ngo amenye niba awishimiye cyangwa atawishimiye. [17] Bakomeza bavuga ko Niyigena Eraste yamaze igihe kirekire asaba MINADEF gushyira umukono kuri iyo nyandikomvugo y'ikinyuranyo cya raporo z'igenagaciro kugeza ubwo yarambiwe abona kuregera urukiko, bakaba basaba urukiko kubona ko kuba MINADEF itaragaragaje icyo ivuga ku bikubiye muri iyo nyandikomvugo y'ibitaremeranyijweho, hakwiye gufatwa ko yabyemeye, maze itegekwemo kumuha ikinyuranyo kingana n'amafaranga miliyoni ijana na mirongo itanu n'icyenda, ibihumbi

magana ane na mirongo ine n'umunani na magana atatu na cumi (159,448,310Frw) nk'indishyi ikwiye. [18] Basoza bavuga ko kuba umushingamategeko yarateganyije umuhango w'uko abarebwa n'iyimurwa bashyira umukono ku nyandikomvugo y'ikinyuranyo cya raporo z'igenagaciro, MINADEF ikaba itarawushyizeho kandi itegetswe kuwushyiraho, ingaruka yaba iyo kudaha agaciro ibikubiye muri iyo nyandikomvugo. Ku bijyanye no kuba uhagarariye MINADEF avuga ko Niyigena Eraste yakoresheje raporo mvuguruza (contre-expertise) kuri raporo itarabaho kubera ko yayikoresheje urwego rwimura rutaremeza raporo y'igenagaciro yakorewe ku mutungo usabirwa indishyi y'ingurane ikwiye, bavuga ko nta shingiro bikwiye guhabwa kubera ko nta kimenyetso MINADEF igaragaza cy'uko raporo y'igenagaciro yemeje nk'urwego rwimura, yayishyikirije Niyigena Eraste. [19] Uhagarariye MINADEF avuga ko urwego ahagarariye rutigeze rumenya inyandikomvugo y'ikinyuranyo yo ku wa 06/05/2016 ndetse ko nta n'umugenagaciro rwigeze rwohereza kuruhagararira mu iyandikwa ryayo. [20] Akomeza avuga ko Urukiko Rukuru nta kosa rwakoze kubera ko rwafashe icyemezo rushingiye ku bimenyetso rwashyikirijwe ndetse no ku mategeko ajyanye na kamere y'ikiburanwa. Asobanura ko ingingo ya 33, igika cya mbere y'itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange ryavuzwe haruguru, iteganya ko "Mu gihe kitarenze iminsi irindwi (7) nyuma y'uko urwego rwimura rwemeje raporo yakozwe n'abagenagaciro, uwimurwa utanyuzwe n'agaciro kahawe ubutaka bwe n'ak'ibikorwa byabukoreweho agaragaza mu nyandiko ibyo anenga muri raporo yakozwe n'abagenagaciro." Avuga ko kuba ku wa 09/05/2016 ari bwo urwego rwimura rwemeje raporo yakozwe n'abagenagaciro, uwimurwa yagombaga kugaragaza ibyo ayinenga mu nyandiko bitarenze ku wa 16/05/2016, nyamara ko nta byo yakozwe, ko ahubwo yagiye agaragariza Urukiko ko ku wa 13/08/2015 ari bwo yakozwe inyandiko inenga raporo y'igenagaciro yakozwe n'umuhanga wa MINADEF, ngo akaba asanga ataragombaga kunenga raporo y'igenagaciro itaremezwa n'urwego rwimura.

## Page 6

[21] Akomeza avuga ko akurikije ibiteganywa n'ingingo ya 331, igika cya kabiri y'itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, asanga Niyigena Eraste yaragombaga gushyikiriza MINADEF raporo mvuguruza bitarenze ku wa 26/05/2016, na byo ntiyabikora, ko kuba rero nta cyo yakozwe, urwego rwimura rwagombaga kwishyura indishyi ikwiye yemejwe n'umugenagaciro warwo, ari na byo rwakoze ku wa 14/07/2016, igihe cyo kuvuguruza raporo cyararenze cyane kandi ko n'iyo amara kubona raporo y'igenagaciro yemejwe n'urwego, akarushyikiriza raporo mvuguruza yakoresheje ku wa 13/08/2015 mu gihe giteganywa n'amategeko, nta kibazo cyari kuba kirimo kandi ko mu gika cya 18 cy'urubanza rujuririrwa, umucamanza yasobanuye ko n'iyo yaba yarubahirije ibiteganywa n'ingingo ya 33 y'itegeko ryerekeye kwimura abantu ku mpamvu z'inyungurusange, atubahirije ibihe byo kuregera urukiko biteganywa n'ingingo ya 34 y'iryo tegeko. [22] Asoza avuga ko kuba Niyigena Eraste yarashyize umukono ku nyandikomvugo y'ibitarenenyijweho ku wa 06/05/2016, uwo munsu ari wo yagombaga guheraho abara iminsi cumi n'itanu (15) yo kuregera Urukiko, bityo ko umunsu wa nyuma wo kurega wari ku wa 21/05/2016 nk'uko biteganywa n'ingingo ya 34, igika cya 4 y'itegeko ryerekeye kwimura abantu ku mpamvu

z'inyungu rusange iteganya ko: "Iyo uwimurwa atanyuzwe n'umwanzuro wafashwe, atanga ikirego mu rukiko rubifitiye ububasha mu gihe kitarenze iminsi cumi n'itanu (15) ibarwa guhera umunsi ashiriyeho umukono ku nyandikomvugo igaragaza ibitemeranyijweho." Uko Urukiko rubibona [23] Impaka kuri iyi ngingo zishingiye ku kumenya niba Niyigena Eraste yaragombaga kubara ibihe byo kuregera urukiko ahereye ku itariki yashyiriyeho umukono ku nyandikomvugo y'ikinyuranyo cya raporo z'igenagaciro yo ku wa 06/05/2016. [24] Ingingo ya 33 y'itegeko N° 32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange iteganya ko" Mu gihe kitarenze iminsi (7) nyuma y'uko urwego rwimura rwemeje raporo yakozwe n'abagenagaciro, uwimurwa utanyuzwe n'agaciro kahawe ubutaka bwe n'ak'ibikorwa byabukoreweho agaragaza mu nyandiko ibyo anenga muri raporo yakozwe n'abagenagaciro. Uvuguruza agaciro yishyiriraho umugenagaciro cyangwa ibiro byazobereye mu igenagaciro kandi byemewe n'urugaga rw'abakora umwuga w'igenagaciro ku mitungo itimukanwa mu Rwanda kugira ngo bagaragaze agaciro mvuguruza. Raporo y'agaciro mvuguruza igomba kuba yabonetse mu gihe kitarenze iminsi icumi

- (10) ibarwa uhereye igihe uwimurwa yasabiye gusubirishamo igenagaciro." [25] Ingingo ya 34 y'itegeko rimaze kuvugwa iteganya ko "Raporo y'agaciro mvuguruza yakozwe n'umugenagaciro cyangwa ibiro by'inyigo byazobereye mu igenagaciro ishyikirizwa urwego rwimura kugira ngo ruyifateho umwanzuro mu gihe kitarengeje iminsi itanu (5) y'akazi nyuma yo gushyikirizwa raporo y'igenagaciro mvuguruza. Iyo raporo y'agaciro mvuguruza yemewe n'urwego rwimura, isimburira iy'igenagaciro rya mbere. Hakorwa kandi inyandikomvugo ishyirwaho umukono n'uhagarariye urwego rwimura, uwimurwa n'abagenagaciro bo ku mpande zombi. Iyo raporo y'agaciro mvuguruza itemewe n'urwego rwimura, hakorwa inyandikomvugo y'ibitemeranyijweho. Iyo uwimurwa atanyuzwe n'umwanzuro wafashwe, atanga ikirego mu rukiko rubifitiye ububasha mu gihe kitarenze iminsi cumi n'itanu (15) ibarwa guhera umunsi ashiriyeho umukono ku nyandikomvugo igaragaza ibitemeranyijweho. Agaciro kemejwe n'urwego rwimura gahabwa uwimurwa kugira ngo igikorwa cyokwimura abantu ku mpamvu z'inyungu rusange kidahagarara mu gihe hagitegerejwe icyemezo cy'urukiko."

1 Ingingo ya 33, igika cya 2 y'itegeko n°32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange iteganya ko" Uvuguruza agaciro yishyiriraho umugenagaciro cyangwa ibiro byazobereye mu igenagaciro kandi byemewe n'urugaga rw'abakora umwuga w'igenagaciro ku mitungo itimukanwa mu Rwanda kugira ngo bagaragaze agaciro mvuguruza. Raporo y'agaciro mvuguruza igomba kuba yabonetse mu gihe kitarenze iminsi icumi (10) ibarwa uhereye igihe uwimurwa yasabiye gusubirishamo igenagaciro".

## Page 7

- [26] Izi ngingo z'itegeko zifatiwe hamwe zigaragaza inzira n'ibihe bigomba kubahirizwa mu gihe uwimurwa atemeranya n'uwimura ku gaciro kahawe umutungo we. [27] Dosiye y'urubanza irimo ibimenyetso bikurikira : Inyandiko y'amasezerano y'ubugure yo ku wa 06/03/2014 aho Karasanyi Joseph na Umuganwa Karasanyi Rose bagurishije Niyigena Eraste ikibanza gifite

m 20 x m 10 ku mafaranga miliyoni indwi (7,000,000Frw); Inyandiko y'amasezerano y'ubugure yo ku wa 31/01/2014, aho Karasanyi Joseph na Umuganwa Karasanyi Rose bagurishije Niyigena Eraste ikibanza gifite m 35 x m 76.33 ku mafaranga miliyoni mirongo itandatu n'esheshatu (66,000,000Frw); Inyandiko y'amasezerano y'ubugure yo ku wa 17/11/2014 Karasanyi Joseph na Umuganwa Karasanyi Rose bagurisha Niyigena Eraste ikibanza gifite m 33,3 x m 40,625 ku mafaranga miliyoni mirongo ine n'esheshatu n'ibihumbi magana atanu (46,500,000Frw); Inyandiko y'amasezerano yo ku wa 05/08/2015 hagati ya sosiyete ikora igenagaciro ry'imitungo itimukanwa yitwa Talent Contractors Ltd na Niyigena Eraste, ikaba ari yo yagombaga gukora igenagaciro mvuguruza ku kibanza kibaruye kuri UPI: 1/03/04/03/1600; Raporo y'igenagaciro mvuguruza yakozwe ku wa 13/08/2015 igaragaza ko umutungo wa Niyigena Eraste ufite agaciro k'amafaranga miliyoni magana abiri na cumi n'esheshatu n'ibihumbi magana abiri na mirongo itandatu na bitanu (216,265,000Frw); Ibaruwa yo ku wa 14/08/2015, Niyigena Eraste yandikiye Umunyamabanga Uhoraho wa MINADEF, amumenyesha ko igenagaciro ryakozwe na Siruis Company Ltd ataryishimiye, asaba guhabwa ingurane ikwiye igaragara ku igenagaciro mvuguruza yari yashyize ku mugereka ; Inyandiko yo ku wa 02/11/2015 itanga uburenganzira (procuration), Karasanyi Joseph na Umuganwa Karasanyi Rose bahaye Niyigena Eraste uburenganzira bwo kwishyurwa amafaranga yo kwimurwa ku mpamvu z'inyungu rusange byakozwe na MINADEF y'ikibanza cyabo gifite UPI: 01/03/04/03/1850, giherereye mu Mudugudu wa Nyanza, Akagari ka Rukatsa, Umurenge wa Kagarama, Akarere ka Kicukiro, Umujyi wa Kigali; Kopi y'inyandikomvugo yo ku wa 06/05/2016 ifite umutwe wiswe" Inyandikomvugo ku bitemeranyijweho ku iyimurwa," igaragaza ko yakorewe ku butaka bufite UPI: 1/03/04/03/1600, ubuso bwa sqm 4.896, uwimurwa agaragaza ko agaciro k'umutungo we ari amafaranga miliyoni magana abiri na cumi n'esheshatu n'ibihumbi magana abiri na mirongo itandatu na bitanu (216,265,000Frw), uwimura akaba yaragaragaje ko uwo mutungo ufite agaciro k'amafaranga miliyoni mirongo itanu n'esheshatu, ibihumbi magana inani na cumi na bitandatu na magana atandatu na mirongo icyenda (56,816,690Frw), ikinyuranyo kikaba amafaranga miliyoni ijana na mirongo itanu n'icyenda, ibihumbi magana ane na mirongo ine n'umunani na magana atatu na cumi (159,448,310Frw). Muri iyo nyandikomvugo hagaragajwemo ko ibitumvikanwaho ari agaciro k'ubutaka ; ubuso bw'ubutaka, umubare n'agaciro k'ibihingwa biri kuri ubwo butaka. Igaragaza ko yashyizweho umukono na Niyigena Eraste, umugenagaciro ku ruhande rwe witwa Munyendamutsa Alphonse n'umugenagaciro wo ku ruhande rw'uwmura (amazina ye ntiyagaragajwe); Inyandiko yo ku wa 09/05/2016 ifite umutwe ugira uti" Iyemezwa ry'ibyavuye mu ibarura ry'umutungo", igaragaza ko agaciro k'umutungo uherereye mu Mudugudu wa Nyanza, Akagari ka Rukatsa, Umurenge wa Kagarama, Akarere ka Kicukiro, kangana n'amafaranga miliyoni mirongo itanu n'esheshatu, ibihumbi magana inani na cumi na bitandatu na magana atandatu na mirongo icyenda (56,816,690Frw) azahabwa Niyigena Eraste. Iyo nyandiko ikaba yarashyizweho umukono n'uwabaruye, Umuyobozi w'Akarere ka Kicukiro, Umunyamabanga

## Page 8

Nshingwabikorwa w'Akagari, Umunyamabanga Nshingwabikorwa w'Umurenge, n'umukozi w'Akarere wakurikiranye icyo gikorwa cy'ibarura ; Inyandiko igaragaza ko ku wa 14/07/2016, Niyigena Eraste yishyuye amafaranga miliyoni mirongo itanu n'esheshatu, ibihumbi magana inani na cumi na bitandatu na magana atandatu na mirongo icyenda (56,816,690Frw) y'ingurane ikwiye, akaba yarashyizwe kuri konti ye ifunguye muri Bank of Africa Rwanda, ayabikuza ku wa 19/07/2016; Ibaruwa yo ku wa 06/06/2016, Umunyamabanga Uhoraho muri MINADEF yanditse yibutsa ibyavugiwe mu nama yo ku wa 12/04/2016 n'ibaruwa yo ku wa 14/08/2015 MINADEF yakiriye ku wa 16/08/2015. Muri iyo baruwa agaragaza ko iyo nama yari igamije kuzuzanya inyandikomvugo ku bitemeranyijweho, agaragaza kandi ko ku wa 07/05/2016 ari bwo MINADEF yashyikirijwe iyo nyandikomvugo y'ibitemeranyijweho ; Ibaruwa yo ku wa 17/10/2018, Niyigena Eraste yandikiye MINADEF asaba kugarurirwa umwimerere w'inyandikomvugo ku bitemeranyijweho mu iyimurwa iriho umukono w'uyihagarariye ; Ibaruwa yo ku wa 18/11/2020, Niyigena Eraste yongeye kwandikira Umunyamabanga Uhoraho muri MINADEF asaba inyandikomvugo y'ibitemeranyijweho, umuhesha w'inkiko witwa Udahemuka Ephrem akaba yaragaragaje ko ku wa 23/11/2020, yageze kuri MINADEF basoma ibikubiye muri iyo baruwa, banga kuyakira banga no kuyishyiraho umukono. [28] Mu gika cya 18 cy'urubanza rujuririrwa, Urukiko Rukuru rwagaragaje ko Niyigena Eraste yakoresheje igenagaciro mvuguruza ku wa 13/08/2015 mbere y'uko iryakozwe n'uwimura ryemezwa, rusobanura ko hakurikijwe ibiteganywa n'itegeko, byafatwa nk'aho nta genagaciro mvuguruza ryakozwe, kuko iryo Niyigena Eraste yakoresheje rigaragaza ko umutungo we ufite agaciro k'amafaranga miliyoni magana abiri na cumi n'esheshatu n'ibihumbi magana abiri na mirongo itandatu na bitanu (216,265,000Frw), rikaba ritafatwa nk'irivuguruza mu gihe ritakozwe hashingiwe ku biteganywa n'ingingo ya 33 y'itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange ivuga ko rigomba gukorwa mu gihe cy'iminsi irindwi nyuma y'uko urwego rwimura rwemeje raporo yakozwe n'abagenagaciro. [29] Mu gika cya 20 cy'urwo rubanza, Urukiko Rukuru rwasobanuye ko Niyigena Eraste yari afite iminsi cumi n'itanu (15) uhareye ku wa 06/05/2016 kugira ngo aregere Urukiko, nyamara arega ku wa 06/08/2021, hashize igihe kirenga imyaka itanu (5). Mu gika cya 22 rwasobanuye ko kuba Niyigena Eraste yarishyuye agaciro k'ubutaka n'ibiburiho kangana n'amafaranga miliyoni mirongo itanu n'esheshatu, ibihumbi magana inani na cumi na bitandatu na magana atandatu na mirongo icyenda (56,816,690Frw) akaba atararegeye urukiko mu gihe giteganyijwe n'amategeko, rusanga ikibazo cy'ingurane y'ubwo butaka cyararangiyeye, bityo ko Urukiko Rwisumbuye rutagombaga kukigarukaho rugira amafaranga rumwongerera. [30] Nk'uko Urukiko Rukuru rwabibonye, uru Rukiko rurasanga ingingo ya 33 n'ya 34 z'itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange ryavuzwe haruguru, ziteganywa inzira n'ibihe bigomba kubahirizwa mu gihe uwimurwa atishimiye igenagaciro uwimura yakoreye umutungo we. [31] Ku birebana n'igihe uwimurwa agomba kumenyesha uwimura ko atishimiye agaciro kahawe umutungo we, uru Rukiko rurasanga Niyigena Eraste yarabimenyesheje MINADEF mu ibaruwa yo ku wa 14/08/2015, bikaba byarakozwe mbere y'uko MINADEF yemeza raporo y'igenagaciro yakozwe n'umugenagaciro yahaye izo nshingano.

## Page 9

[32] Ku birebana n'igihe cyo gukoresha igenagaciro mvuguruza nk'uko byagaragajwe mu bimenyetso byavuzwe haruguru, Niyigena Eraste yayikoresheje ku wa 13/08/2015, ibi na byo bikaba byarakozwe MINADEF itaremeza igenagaciro ryakozwe n'umugenagaciro kuko yo yaryemeje ku wa 09/05/2016. [33] Ku birebana no kuba Niyigena Eraste yaragombaga kuregera urukiko mu minsi cumi n'itanu (15) ibarwa uherye igihe yamenyeye inyandikomvugo y'ikinyuranyo cya raporo z'igenagaciro. Nk'uko byagaragajwe haruguru, Niyigena Eraste, umugenagaciro we ndetse n'uwo bivugwa ko ari umugenagaciro wa Minadef ariko utaragaragaje amazina ye, bashyize umukono kuri iyo nyandikomvugo ku wa 06/05/2016, ibi bikaba byumvikanisha ko n'ubwo iyo nyandikomvugo MINADEF yari itarayishyiraho umukono, Niyigena Eraste yayimenye anayishyiraho umukono kuri iyo tariki, akaba ari yo yagombaga guheraho abara ibihe byo kuregera urukiko kuko itegeko ridadeganye ko agomba kuregera urukiko ari uko uwimura yashyize umukono kuri iyo nyandikomvugo y'ibitemeranyijweho, ahubwo rivuga ko icyo gihe gitangira kubarwa uherye igihe utabyishimiye ashiriyeye umukono ku nyandikomvugo y'ibitemeranyijwe. [34] Urukiko rushingiye ku biteganywa n'ingingo ya 33 n'ya 34 z'itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange no ku bisobanuro byatanzwe, rusanga ubujurire bwa Niyigena Eraste utarubahirije ibiteganywa n'amategeko nta shingiro bufite. Ibyerekeye indishyi [35] Niyigena Eraste n'umwunganira basaba uru Rukiko gutegeka MINADEF kumuha indishyi z'akababaro zingana n'amafaranga miliyoni eshanu (5,000,000Frw) ku nzego zose, n'amafaranga miliyoni eshatu (3,000,000Frw) yishyuye umugenagaciro. [36] Uhagarariye MINADEF avuga ko amafaranga y'indishyi z'akababaro Niyigena Eraste asaba nta shingiro akwiye guhabwa kubera ko ubujurire bwe nta shingiro bufite. Ku mafaranga avuga ko yahaye umugenagaciro, avuga ko kuba atarigeze ayajuririra, atasaba kuyahabwa kuri uru rwego. Uko Urukiko rubibona [37] Urukiko rusanga Niyigena Eraste atagomba guhabwa amafaranga y'indishyi z'akababaro asaba kubera ko nta bisobanuro ayatangira. Naho ibirebana no gusubizwa amafaranga yahembye umugenagaciro, iyi ngingo ikaba itagomba kwakirwa ngo isuzumirwe kuri uru rwego kubera ko itigeze igibwaho impaka mu rubanza rujuririrwa. Ibyerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka [38] Niyigena Eraste n'umwunganira basaba uru Rukiko gutegeka MINADEF kumuha amafaranga y'u Rwanda miliyoni imwe (1,000,000Frw) y'ikurikiranarubanza n'amafaranga y'u Rwanda miliyoni ebyiri (2,000,000Frw) y'igihembo cya Avoka ku nzego zose. Naho ku mafaranga y'igihembo cya Avoka MINADEF isaba, bavuga ko atahabwa ishingiro kubera ko bareze bagamije kurenganurwa. [39] Uhagarariye MINADEF avuga ko amafaranga basaba adakwiye guhabwa ishingiro. Asaba ahubwo uru Rukiko gutegeka Niyigena Eraste guha urwego ahagarariye amafaranga y'u Rwanda ibihumbi magana atanu (500,000Frw) y'igihembo cya Avoka, yiyongera ku yo yategetswe n'Urukiko Rukuru. Uko Urukiko rubibona [40] Ingingo 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 iteganyako" Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe

---

Page 10

mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe" [41] Uru Rukiko rusanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Niyigena Eraste asaba atagomba kuyahabwa kubera ko ubujurire bwe nta shingiro bwahawe. Naho ay'igihembo cya Avoka MINADEF isaba ikaba igomba kuyahabwa uko yayasabye kuko ari mu rugero. Bityo, Niyigena Eraste akaba agomba guha MINADEF amafaranga ibihumbi magana atanu (500,000Frw) y'igihembo cya Avoka kuri uru rwego. III. ICYEMEZO CY'URUKIKO [42] Rwemeje ko ubujurire bwatanzwe na Niyigena Eraste, nta shingiro bufite. [43] Rwemeje ko urubanza RADA00025/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 09/02/2024, rudahindutse. [44] Rutegetse Niyigena Eraste guha Minisiteri y'Ingabo (MINADEF) amafaranga ibihumbi magana atanu (500,000 Frw) y'igihembo cya Avoka kuri uru rwego. [45] Ruvuze ko amafaranga y'ingwate y'amagarama Niyigena Eraste yatanze ajurira, ahwanye n'ibyakoze mu rubanza.

---

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://www.amategeko.gov.rw/view/doc/9235/9703>

CASE PAGE              <https://chat.esheria.ai/case-law/rwanda/niyigena-eraste-v-leta-yu-rwanda-minadef-compensationforexpropriation-court-of-appeal-2025>

Prepared on 12 October 2026 · Esheria