

RWANDA / JUDGMENT

NIYIGENA v. MINADEF

RADAA 00008/2024/CA

COURT

Court of Appeal

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NIYIGENA v. MINADEF

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Text

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NIYIGENA v. MINADEF [Rwanda URUKIKO RW'UBUJURIRE – RADAA 00008/2024/CA (Munyangeri, P.J., Kamere na Rutazana, J.) 24 Mutarama 2025] Amategeko agenga imanza z'ubutegetsi – Kwimura abantu ku mpamvu z'inyungu rusange – Kuregera urukiko – Ibihe byo kuregera urukiko – N'ubwo uwimura atashyira umukono ku nyandikomvugo y'ibitemeranyijwe, uwimurwa utishimiye igenagaciro uwimura yakoreye umutungo we aregera urukiko mu gihe cy'iminsi cumi n'itanu itangira kubarwa ku munsu yashyize umukono ku nyandikomvugo y'ibitemeranyijwe. Incamake y'ikibazo: Niyigena yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko Minisiteri y'Ingabo (MINADEF) itegekwa kumwishyura indishyi ikwiye kubera kwimurwa ku mpamvu z'inyungu rusange, igizwe n'ikinyuranyo mu igenagaciro ku mutungo yaguze n'abitwa Karasanyi n'Umuganwa, bakaba bari batarakorana ihererekanya mutungo hamwe n'inyungu zayo. Avuga ko ku wa 06/05/2016, umugenagaciro we hamwe n'uwa Minisiteri y'Ingabo bakoze inyandikomvugo y'ibitemeranywaho, bombi bayishyiraho umukono maze ishyikirizwa MINADEF kugira ngo iyishyireho umukono ibe yakwishyura ikinyuranyo cy'izo raporo z'igenagaciro zombi, ariko ntiyongeye kuyishyira ahagaragara. MINADEF yatanze inzitizi yo kutakira ikirego cy'Urega ivuga ko nta nyungu n'ububasha bwo kurega afite kuko umutungo

asabira indishyi atari uwe, ahubwo ari uwa Karasanyi n'Umuganwa, akaba ari bo bimuwe mu mutungo ubaruye kuri UPI: 01/03/04/03/1850 ariko amafaranga yo kwimurwa ashyirwa kuri konti y'Urega iri muri Bank of Africa kuko bari baramuhaye uburenganzira bwo kwakira ayo mafaranga, akaba yaranayabikuje. Urukiko Rwisumbuye rwaciye urubanza rwemeza ko iyo nzitizi nta shingiro ifite, ko ikirego cy'Urega gifite ishingiro, bityo Uregwa akaba agomba kumwishyura ikinyuranyo ku ndishyi ikwiye ndetse n'izindi ndishyi zitandukanye zijyanye na yo. Iki cyemezo Uregwa yakijuririye mu Rukiko Rukuru avuga ko hirengagijwe inzitizi yatanze yo kutakira ikirego, kuba imiburaniri ye igaragaza ko abari ba nyirumutungo batigeze bavuguruzza agaciro kahawe ubutaka bwabo mbere y'uko bimurwa no kuba icyemezo cyafashwe cyarashingiye ku mpapuro z'ubugure Urega atigeze amugaragariza mu gihe cyo kwimurwa ndetse n'izigaragaza ko habaye iherekanya ry'ubwo butaka. Urega yireguye avuga ko ubwo bujurire nta shingiro bufite kuko ubutaka ari ubwe, asaba ko abo babuguze batumizwa kugirango babisobanurire Urukiko Rukuru. Yatanze ubujurire bwuririye ku bw'Uregwa asaba kugenerwa indishyi ikwiye hagendewe ku bikorwa yakoreye muri ubwo butaka ndetse no ku gaciro kabwo k'uwo muni. Urukiko Rukuru rwaciye urubanza rwemeza ko ubujurire bw'Urega nta shingiro bufite, ko ubw'Uregwa bufite ishingiro, ko urubanza rujuririrwa ruhindutse kuri byose, ko amafaranga yose Uregwa yategetswe guha Urega akuweho ahubwo akaba ari we ugomba kumwishyura amafaranga y'igihembo cy'avoka n'ay'ikurikirana rubanza. Icyo cyemezo cyafashwe n'Urukiko Rukuru, Urega yakijuririye muri uru Rukiko rw'Ubugurire arusaba ko rusuzuma niba 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. Aha asobanura ko Urukiko Rukuru rwirengagije ibiteganyijwe mu ngingo ya 33 na 34 z'Itegeko N° 32/2015 ryo ku wa 11/06/2015, ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, rukemeza ko yagombaga kuregera urukiko mu gihe cy'iminsi cumi n'itanu (15) ibarwa uhereye ku wa 06/05/2016, umunsi yashyiriyeho umukono ku nyandikomvugo y'ibitaremberanyijweho. Avuga ko Uregwa atigeze ashyira umukono kuri iyo nyandikomvugo kandi yari ategetswe kuyishyiraho umukono, bityo hakwiye gufatwa ko yabyemeye, maze agategekwa kumuha ikinyuranyo cy'indishyi ikwiye.

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Uregwa asobanura ko iyo nyandikomvugo y'ikinyuranyo atigeze ayimenya dore ko nta n'umugenagaciro yigeze yohereza kumuhagararira mu iyandikwa ryayo. Ikindi ni uko mu rubanza rujuririrwa Urukiko nta kosa rwakoze kuko rwafashe icyemezo rushingiye ku bimenyetso impande zombi zagaragaje bihuje kamere y'icyo baburana. Akurikije ibiteganyijwe mu ngingo ya 33 y'Itegeko ryavuzwe haruguru, Uregwa avuga ko urwego rwimura rwemeza raporo y'abagenagaciro maze bitarenze iminsi irindwi uwimurwa akaba yagaragaje ibyo ayinenga, ariko ngo Urega ntiyakoze iyo nyandiko inenga raporo y'igenagaciro yakozwe n'umuhanga wa MINADEF muri icyo gihe, ahubwo yabikoze hashize kinini. Ikindi ni uko raporo inenga Urega yakoze ku wa 13/08/2015 mbere y'uko inyandiko y'igenagaciro yakozwe n'umugenagaciro w'Uregwa yemezwa n'urwego rwimura (MINADEF), ifatwa nkaho nta genagaciro mvuguruzwa ryakozwe. Uregwa asoba asaba uru Rukiko kwemeza ko ubujurire bw'Urega nta shingiro bufite kuko atubahirije ibihe byo kuregera urukiko biteganyijwe n'Itegeko

ryerekeye kwimura abantu ku bw'inyungu rusange. Incamake y'icyemezo: N'ubwo uwimura atashyira umukono ku nyandikomvugo y'ibitemeranyijwe, uwimurwa utishimiye igenagaciro uwimura yakoreye umutungo we aregera urukiko mu gihe cy'iminsi cumi n'itanu itangira kubarwa ku munsu yashyize umukono ku nyandikomvugo y'ibitemeranyijwe. Bityo, Niyigena Eraste yagombaga kuregera urukiko mu minsi cumi n'itanu (15) uhereye ku wa 06/05/2015 umunsu yamenyeye inyandikomvugo y'ikinyuranyo cya raporo z'igenagaciro ayishyiraho umukono, n'ubwo MINADEF yo yari itarayishyiraho umukono. Ubujurire nta shingiro bufite. Amagarama aherera ku isanduku ya Leta. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3, 12, n'ya 111. Itegeko No32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, ingingo ya 33 n'ya 34. Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. 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 kuwuhaga agaciro cyatangiye 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

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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 No 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. [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 (159,442,310Frw), 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 bimuwe 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 No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ku ngingo ya 3 y'Itegeko No15/2004 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);

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- 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 bimuwe, 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. [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 Rukuru 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 No 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'Ubugurire, urubanza ruhabwa RADAA00008/2024/CA, maze nyuma y'imihango ntegururubanza yose, ababuranyi bamenyeshwa ko ruzaburanishwa ku wa 06/09/2024, uwo muni iburanisha ryimurirwa ku wa 25/09/2024 kubera izindi gahunda z'urukiko. [12] Uwo muni 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

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ikirego mu Rukiko, basozza 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:

- a. 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;
- b. Ibyerekeye indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. II.
ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
1. 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 riteganyaga ko inyandikomvugo y'ibitaremeryanyijweho 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'ibitaremeryanyijweho, hakwiye gufatwa ko yabyemeye, maze itegekwe 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] Basoya bavuga ko kuba umushingamategeko yateganyije 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.

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[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, iteganyaga 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. [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 yakoze, 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'iyi 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'iyi 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 iteganywa ko iyo uwimurwa atanyuzwe n'umwanzuro wafashwe, atanga ikirego mu rukiko rubifitiye ububasha mu gihe kitarenze iminsi cumi n'itanu (15) ibarwa guhera umunsu ashiriyeye 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 No 32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange iteganywa 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.

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 iteganywa 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.

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[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, isimbura 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 ashyiriyeho umukono ku nyandikomvugo igaragaza ibitemeranyijweho. Agaciro kemejwe n'urwego rwimura gahabwa uwimurwa kugira ngo igikorwa cyo kwimura abantu ku mpamvu z'inyungu rusange kidahagarara mu gihe hagitegerejwe icyemezo cy'urukiko. [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'akamafaranga 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, gihereye 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

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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'uwimura (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'uwarubonye, Umuyobozi w'Akarere ka Kicukiro, Umunyamabanga Nshingwabikorwa w'Akagari, Umunyamabanga Nshingwabikorwa w'Umurenge, n'umukuzi 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 (56,816,690 Frw) 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 ibyavugiye 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) uhaye 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

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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, ziteganyanya 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. [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 uhaye 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 ridadeganyanye ko agomba kuregera urukiko ari uko uwimura yashyize umukono kuri iyo nyandikomvugo y'ibitemeranyijweho, ahubwo rivuga ko icyo gihe gitangira kubakwa uhaye igihe utabyishimiye ashyiraye 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 byatanze, rusanga ubujurire bwa Niyigena Eraste utarubahirije ibiteganywa n'amategeko nta shingiro bufite.

2. 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.

3. 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

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(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 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 gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe 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 bwatanze na Niyigena Eraste, nta shingiro bufite. [43] Rwemeje ko urubanza RADA00025/2022/HC/KIG rwaciye n'Urukiko Rukuru ku wa 09/02/2024, rudahindutse. [44] Rutegetse Niyigena Eraste guha Minisiteri y'Ingabo (MINADEF) amafaranga ibihumbi magana atanu (500,000Frw) y'igihembo cya Avoka kuri uru rwego. [45] Ruvuze ko amafaranga y'ingwate y'amagarama Niyigena Eraste yatanze ajurira, ahwanye n'ibyakozwe mu rubanza.

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