

RWANDA / JUDGMENT

NYIRANDAYAMBAJE vs. UMUYI WA KIGALI

RADA 00006/2022/HC/KIG

COURT

High Court

DECIDED

8 March 2023

CASE / FILE NUMBER

RADA 00006/2022/HC/KIG

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NYIRANDAYAMBAJE vs. UMUYI WA KIGALI

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2023-03-08
- Case/document no.: RADA 00006/2022/HC/KIG
- Collection: High Court

Text

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NYIRANDAYAMBAJE vs. UMUYI WA KIGALI [Rwanda URUKIKO RUKURU – RADA 00006/2022/HC/KIG – (Hitimana, J. P.) 8 Werurwe 2023] Amategeko agenga imanza z’ubutaka – Imyubakire – Kubaka inyubako nta byangombwa – Ibihano bitangwa ku muntu wubatse nta byangombwa – Kubaka inyubako nta ruhushya ntabwo bihita bihanishwa igihano cyo kuyikuraho, bisaba ko iba itajyanye n’igishushanyombonera cy’umuyi, cyangwa yubatswe itubahirije amabwiriza, ariko mu gihe ibyubahirije uwayishyizeho acibwa amande, agahagarika kubaka kugeza igihe aboneye icyangombwa cyaburaga. Incamake y’ikibazo: Nyirandayambaje utuye mu Muyi wa Kigali, Akarere ka Gasabo, Umurenge wa Remera, Akagali ka Rukiri I mu mudugudu w’Urumuri, yahubatse inzu zinyongera nta burenganzira abihereye n’Urwego rubishinzwe maze zikurwaho hamwe n’uruzitiro rwari rumaze imyaka icumi rwubatswe, n’Ubuyobozi bwa Kagali kabisabwe n’ubuyobozi bw’Umurenge. Nyuma y’uko atakambiye Ubuyobozi bw’Umuji wa Kigali asaba guhabwa indishyi z’ibyo yasenye ariko agasubuzwa ko atazihabwa, yabiregeye Urukiko Rwisumbuye rwa Nyarugenge asaba ko yahabwa ubutabera kuko yareganye, Umuyi wa Kigali

ukamusubiza umutungo we. Umujyi wa Kigali uvuga ko ibyo Urega avuga atari ukuri kuko yubatswe izo nzu mu buryo bw'akajagari biba ngombwa ko zikurwaho kuko Iteka rya Minisitiri N°03/cab.m/019 ryo ku wa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire iteganya ko amakosa y'imyubakire ahanishwa gusenya ibyubatswe. Urukiko Rwisumbuye rwemeje ko ikirego cy'Urega nta shingiro gifite, maze akijuririra mu Rukiko Rukuru avuga ko Urukiko rwirengagije imiburanire ye, rumuhanisha igihano gisumba icyateganywaga n'Itegeko, mu gihe yari guhanishwa gucibwa amande mu mwanya wo gusenyerwa; dore ko uwafashe icyo gihano nta bubasha yari abifitiye ndetse bikaba bitari byubahirije ibiteganywa n'amategeko. Mu myiregurire ye, Uregwa avuga ko ubujurire bw'Urega nta shingiro bufite kubera ko uwakuyeho inyubako afite ububasha yahawe n'Akarere, ndetse akaba yarakuyeho iyo nyubako mu buryo bukurikije amategeko, kuko kubaka nta burenganzira ubanje gusaba bihanishwa igihano cyo gukuraho inyubako. Muri uru rubanza hasuzumwe ikibazo cyo kumenya niba Urega yarahanwe n'utabifitiye ububasha kuko avuga ko akurikije ibiteganywa n'amategeko Urwego rw'Igihugu rufite imiturire n'imyubakire mu nshingano zarwo ni rwo ruhana amakosa y'imyubakire, harimo no gutegeka ko inyubako isenywa, iyo Akarere cyangwa Umujyi wa Kigali bitahannye, nta mpamvu ifatika. Bisobanuye ko inzego zemerewe gutanga ibihano by'imyubakire ari Akarere n'Umujyi wa Kigali, ariko igihano cyo gusenya cyo kikabanza kwemezwa na Komite Nyobozi y'Akarere cyangwa y'Umujyi wa Kigali. Bityo, kuba yarasenye n'Ubuyobozi bw'Akagari, ndetse bikaba bitarabanje kwemezwa na Komite Nyobozi y'Akarere, yakorewe amakosa agomba kuba intandaro yo kwishyura indishyi k'uruhande rw'Umujyi wa Kigali.

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Uregwa avuga ko nta makosa Urega yakorewe kubera ko amategeko yemerera Akarere guha ububasha Umurenge bwo gukuraho inyubako yubatswe mu kajagari. Incamake y'icyemezo: Kubaka inyubako nta ruhushya ntabwo bihita bihanishwa igihano cyo kuyikuraho, bisaba ko iba itajyanye n'igishushanyombonera cy'umujyi, cyangwa yubatswe itubahirije amabwiriza, ariko mu gihe ibyubahirije uwayishyizeho acibwa amande, agahagarika kubaka kugeza igihe aboneye icyangombwa cyaburaga. Ubujurire bufite ishingiro. Ubujurire bwuririye ku bundi nta shingiro bufite. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 29, 34 n'ya 151. 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 111 n'ya 132. Iteka rya Minisitiri N°03/cab.m/019 ryo ku wa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire, ingingo ya 37, 38 n'ya 39. Iteka rya Minisitiri No 02/CAB.M/019 rigena ibyiciro by'inyubako n'uburyo bukurikizwa mu gusaba no gutanga impushya zo kubaka, ingingo ya 5. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Nyirandayambaje Dorothée yubatswe inzu z'inyongera aho asanzwe atuye (annexes) nta burenganzira abanje kubisabira. Aho Ubuyobozi bw'Umurenge bubimenyeye, bwakuyeho izo nyubako nk'uko bigaragara muri raporo y'inama ya JOC yo ku wa 28/08/2019, kubera ko izo nyubako ari akajagari kubatswe na Nyirandayambaje Dorothée. [2] Nyuma yo gutakamba Nyirandayambaje Dorothée asaba ko yahabwa agaciro k'izo nyubako ze zasenywe agasubizwa ko atahabwa izo ndishyi kubera ko yakoze amakosa yo kubaka nta

ruhushya abanje kubisabira, yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, arega Umujyi wa Kigali, avuga ko taliki ya 27/08/2019 saa tanu z'amanywa, Bwana Umunyamabanga Nshingwabikorwa w'Akagari ka Rukiri I aherekajwe na Dasso; abakozi b'irondo n'abandi bantu benshi bitwaje amapiki binjiye ku gahato mu rugo kwa Nyirandayambaje Dorothee, bamukingirana mu nzu we n'abana be, ubundi batangira kumusenyerera inyubako zigizwe na "annexes"3 n'uruzitiro rwari rumaze imyaka 10 rwubatswe, maze ibikoresho byari bigize izo nyubako byose barabitwara.

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Icyo gikorwa cy'urugomo cyarangiye saa kumi n'igice, kikaba cyarakozwe mu buryo butunguranye kuko Nyirandayambaje atabanje kubimenyeshwa ngo anahabwe amahirwe yo kwisobanura, kandi kikaba cyarakozwe n'urwego rudafite mu nshingano zarwo kugenzura inyubako. Nyuma y'icyo gikorwa Nyirandayambaje Dorothee yabimenyesheje inzego z'ubuyobozi zinyuranye asaba kurenganurwa agasubizwa umutungo we wigabijwe, ariko ntiyahabwa igisubizo kimushimishije, akaba ariyo mpamvu yahisemo kubitangira ikirego kugirango ahabwe ubutabera. [3] Uhagarariye Umujyi wa Kigali yasobanuye ko uko Nyirandayambaje Dorothee asobanura ibintu atari uko byagenze. Yasobanuye ko mw'ibaruwa yo kuwa 28/08/2019, Umunyamabanga Nshingwabikorwa w'Umusigire w'Umurenge wa Remera yohereje Umuyobozi w'Akarere ka Gasabo amushyikiriza raporo y'inwandikomvugo ya JOC (Inama y'umutekano yaguye mu Karere ka Gasabo), mu ngingo ya III, aho yagaragaje inyubako (Annex 6) Nyirandayambaje Dorothee yubatswe mu buryo bw'akajagari ndetse mu gihe bari barimo gusenya Nyirandayambaje Dorothee yahamagaye abakozi b'Umujyi wa Kigali baje basanga akajagari kamaze gukurwaho ndetse basanga ibyo yavugaga ko bamusenye bamufungiranye ari ibinyoma kuko baje bakomanga Nyirandayambaje Dorothee aba ariwe ubafungurira bamubajije uruhushya rwo kubaka yahawe ntarwo yagaragaje. Avuga ko ibyo Nyirandayambaje Dorothee avuga, ko isenywa ryakozwe n'urwego rudafite mu nshingano zarwo kugenzura inyubako yirengagije ibiteganywa n'Iteka rya Minisitiri N°03/cab.m/019 ryo ku wa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire mu ngingo ya 38, iteganya ko: Ku makosa y'imyubakire ahanishwa gusenya ibyubatswe, nyuma ya raporo y'abashinzwe igenzura, icyemezo cyo gusenya inyubako gifatwa na Komite Nyobozi y'Akarere cyangwa y'Umujyi wa Kigali, ikanagena uburyo bikorwamo. Komite Nyobozi y'Akarere cyangwa y'Umujyi wa Kigali ishobora guha Umurenge ububasha bwo gushyira mu bikorwa ibivugwa mu gika cya mbere cy'iyi ngingo. Ko ibaruwa yo kuwa 09/10/2019 Akarere ka Gasabo kandikiye Nyirandayambaje Dorothee kandi ikibazo cy'ubutaka bwasenyweho inzu bwari buri mu manza nk'uko bigaragazwa n'Umurenge wa Remera mu ibaruwa isubiza Nyirandayambaje Dorothee yo kuwa 09/01/2015 ndetse na raporo yayobowe n'urwego rw'Umuvunyi yo kuwa 08/03/2019 y'inama y'inteko y'Abaturage b'Akagari ka Rukiri I, mu Murenge wa Remera, Akarere ka Gasabo, Umujyi wa Kigali ku kibazo cya Nyirandayambaje Dorothee bigaragara ko ariwe witeye ibibazo kuko atumviye inama yagiriwe. [4] Urukiko Rwisumbuye rwemeje ko ikirego cya Nyirandayambaje Dorothee nta shingiro gifite kubera ko yubatswe nta burenganzira abanje gusaba, ubwo avuga yari yasabye bukaba bwari ubwo kubaka igikoni na douche, kandi narwo rukaba rwari rwararangiye.

Rwategetse ko ingwate y'igaramaya Nyirandayambaje Dorothée yatanze arega iheze mu Isanduku ya Leta kuko ihwanye n'ibyakozwe muri uru rubanza. [5] Nyirandayambaje Dorothée ntiyishimiye imikirize y'uru rubanza, arajurira avuga ko Urukiko rwirengagije imiburanire ye, akaba yaragarazaga ko yahawe igihano gisumba icyateganywaga n'itegeko kuko igihano yagombaga guhanishwa ari icyo gucibwa amande atari icyo gusenyerwa kubera ko n'ubwo yaba nta burenganzira yari yabanje gusaba, ibyo yubakaga ntabwo bihabanye n'igishushanyo mbonera cy'Umujyi. Avuga kandi ko uwafashe icyo gihano nta bubasha yari abifitiye kandi ntabwo byananyuze mu nzira ziteganywa n'amategeko.

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- [6] Umujyi wa Kigali uvuga ko ubujurire bwa Nyirandayambaje Dorothée nta shingiro bufite kubera ko uwakuyeho inyubako afite ububasha yahawe n'Akarere, ndetse akaba yarakuyeho iyo nyubako mu buryo bukurikije amategeko, kuko kubaka nta burenganzira ubanje gusaba bihanishwa igihano cyo gukuraho inyubako. [7] Muri uru rubanza harasuzumwa niba Nyirandayambaje Dorothée yaragombaga guhanishwa igihano cyo gusenyerwa inyubako yubatse nta burenganzira, cyangwa niba yaragombaga gucibwa amande inyubako ntizisenye. Mu gihe Urukiko rurasanze inyubako zaragombaga gusenyerwa, harasuzumwa niba kuzisenya byarakozwe n'ubifitiye ububasha kandi akabikora akurikije amategeko. Mu gihe Urukiko rusanze bitari ngombwa ko inyubako zikurwaho, ntibiba bikibaye ngombwa gusuzuma ububasha bw'Umuyobozi wafashe icyo cyemezo, kuko inenge ya mbere yaba yihagije kugaragaza ko icyemezo kinyuranyije n'amategeko. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
1. Gusuzuma niba icyemezo cyo gukuraho inyubako Nyirandayambaje Dorothée yari yubatse nta burenganzira abanje kubisabira cyarafashwe hirengagijwe amategeko 1.1. Kumenya niba Nyirandayambaje Dorothée yaragombaga guhanishwa igihano cyo gusenyerwa [8] Me Rwigema Vincent wunganira Nyirandayambaje Dorothée avuga mu gika cya 14 cy'urubanza rujuririrwa, Urukiko rwanzuye ko isenyerwa rya Nyirandayambaje Dorothée ritanyuranije n'amategeko, ngo kuko yari kugenzurwa akanamenyeshwa iyo aza kuba yarahawe uruhushya rwo kubaka, hanyuma akanyuranya n'ibiri mu ruhushya yahawe. Mu gika cya 15 Urukiko rwanzuye ko nta kosa ubuyobozi bw'Umujyi wa Kigali bwakoze, bityo ikirego cya Nyirandayambaje Dorothée kikaba nta shingiro gifite. Avuga ko Urukiko rwirengagije imiburanire ya Nyirandayambaje Dorothée wagarazaga ko yahawe igihano gisumba icyateganywaga n'itegeko, agihabwa n'utabifiye ububasha bitananyuze mu nzira ziteganywa n'amategeko. [9] Uhagarariye Nyirandayambaje Dorothée avuga ko mu gufata icyemezo, urukiko rwirengagije amategeko akurikira: • Ingingo ya 5 y'Iteka rya Minisitiri No 02/CAB.M/019 rigena ibyiciro by'inyubako n'uburyo bukurikizwa mu gusaba no gutanga impushya zo kubaka. Ingingo ya 37; 38 na 39 z'Iteka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire. Ingingo ya 111 na 132 al.2 CPCCSA, ingingo ya 29; 34 na 151 z'Itegeko Nshinga rya Repubulika y'u Rwanda. 1. Guhabwa igihano gisumba igiteganywa n'itegeko: Ingingo ya 5 y'Iteka rya Minisitiri No 02/CAB.M/019 rigena ibyiciro by'inyubako n'uburyo bukurikizwa mu

gusaba no gutanga impushya zo kubaka igaragaza ko inyubako zo guturamo zubatswe ku buso butarengeje metero kare 200, zidafite igice cyo munsu y'ubutaka kandi zakira abantu batarenze 15 zibarizwa mu kiciro cya 2, bityo n'izasenye zivugwa muri uru rubanza akaba aricyo kiciro zibarizwamo. Umugereka wa IV w'Iteka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire kuri No 1 hateganiye ko inyubako nshya zubatswe nta ruhushya ariko hakurikijwe ibiteganywa n'igishushanyo mbonera ku bijyanye n'imyubakire, nyiri ukuzubaka ahanishwa gucibwa amande angana na 300.000frw, agasaba uruhushya rwo kubaka; kandi akaba ahagaritse ibikorwa bya kugeza igihe azarukirwa. Kuba Urukiko rwarasanze

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Nyirandayambaje Dorothee yarubatswe nta ruhushya inyubako zo mu rwego rwa 2 ariko rukemeza ko kuba yarahamishijwe kumushyamba bikurikije amategeko, asanga harabayeho kwirengagiza ibyo amategeko ateganywa byavuzwe haruguru, kuko yaba yarahawe igihano kinyuraniye n'igiteganywa n'amategeko, Nyirandayambaje Dorothee yasobanuraga ko inyubako yazitangiye afite uruhushya ariko azisiza rwararengeje igihe, ndetse abatangira n'ikimenyetso. Urukiko mu gika cya 13 cy'urubanza rujurirwa rwanzuye ko uruhushya yari yarahawe runyuraniye nibyo avugako yubatswe, nyamara rukomeza gushimangira ko igihano cyo gusenyerwa kitanyuraniye n'amategeko, kandi nyamara ukurikije ibyo Nyirandayambaje yiyemereraga, yakabaye yarahamishijwe ibiteganywa kuri numero 10 y'umugereka wa IV w'Iteka ryavuzwe haruguru, agacibwa amande angana na 50.000frw akanategakwaga gusaba kuvugururirwa uruhushya, ibikorwa by'ubwubatsi bikaba bisubitswe kugeza igihe uruhushya ruzavugururirwa. Mu gihe Urukiko rwari rusanze ko yubatswe ibinyuraniye n'uruhushya yari yarahawe, urukiko rwari rukwiriye kubona ko iyo amategeko aza kubahirizwa, yakabaye yarahamishijwe igihano giteganyijwe kuri numero 13 y'umugereka wa IV w'Iteka ryavuzwe haruguru, agacibwa amande angana na 50.000frw agasabwa no guhitabwira abikoreye. [10] Me Shema Gerard uhagarariye Umujyi wa Kigali avugako Urukiko rushingiye ku bisobanuro byatanzwe n'ababuranyi, rwasanze kuba Nyirandayambaje Dorothee ubwe atabasha kugaragaza ko yari afite uburenganzira bwo kubaka inyubako asabira indishyi z'ibikoresheye byasenywe. Avugako ntanaho Nyirandayambaje Dorothee yahera avugako yasenyewe bitubahirije amategeko atabanye kumenyeshwa aho Umujyi wa Kigali ukaba waravuze ko yari kugenzurwa ndetse akanamenyeshwa mu gihe yari kubakakwaga yarahawe uruhushya rwo kubaka noneho akubakwaga binyuraniye n'uruhushya yahawe. Urukiko rero rwasanze Nyirandayambaje Dorothee yarubatswe inyubako mu buryo budakurikije amategeko nk'uko bigaragara mu ibaruwa yo kuwa 09/10/2019 ndetse n'ingingo ya 39 y'Iteka rya Minisitiri N° 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire. Ndetse n'umugereka wa IV w'Iteka kuri numero 2 uteganywa ko inyubako nshya yubatswe nta ruhushya igomba kuvanwaho. Bakaba basabwaga icyemezo cyafashwe n'urukiko mu rubanza rujurirwa kigomba kugumaho kuko cyafashwe mu buryo bukurikije amategeko. [11] Urukiko rwasanze icyo Nyirandayambaje Dorothee n'umwunganira mu mategeko banenga ku cyemezo cy'urubanza rwajuririye, ni uko Urukiko Rwisumbuye rwemeje ko kuba Nyirandayambaje Dorothee yarahamishijwe igihano cyo

gusenyerwa bikurikije amategeko, ariko bakarunenga bavuga ko kuba Urukiko rwarasanze Nyirandayambaje Dorothee yarubatswe nta ruhushya inyubako zo mu rwego rwa 2 ntibyari bihagije kugira ngo rubishingireho ruvuga ko yagombaga gusenyerwa, kubera ko binyuranyije n'ibiteganywa n'Umugereka wa IV w'Iteka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire kuri numero 1 hateganyijwe ko inyubako nshya zubatswe nta ruhushya ariko hakurikijwe ibiteganywa n'igishushanyo mbonera ku bijyanye n'imyubakire, nyiri ukuzubaka ahanishwa gucibwa amande angana na 300.000frw, agasaba uruhushya rwo kubaka; kandi akaba ahagaritse ibikorwa bye kugeza igihe azaruherwa. [12] Urukiko rurasanga abahagarariye Umujyi wa Kigali nabo bashingira kuri iri Teka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire, mu ngingo yaryo ya 37, iya 38 n'iya 39 bakemeza ko

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igihano Nyirandayambaje Dorothee yagombaga guhanishwa ari icyo gusenyerwa kuko aricyo giteganyijwe n'izo ngingo. [13] Urukiko rurasanga ingingo ya 37, igika cya mbere, y'Iteka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire iteganywa ko umuntu cyangwa ishyirahamwe rifite ubuzimagatozi ukoze ikosa ryo mu myubakire, ahanishwa ibihano byo mu rwego rw'ubutegetsi biteganyijwe ku mugereka wa IV w'iri Teka, hakurikijwe ibyiciro by'inyubako zakoreweho amakosa. [14] Urukiko rurasanga Umugereka wa IV w'Iteka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire, ugaragaza, mu gace ka 2, ko igihano cyo gusenyerwa gihanishwa umuntu wakoze amakosa yo mu myubakire, yubaka inyubako nshya nta ruhushya, kandi atubahirije igishushanyo mbonera ndetse/cyangwa atubahirije ibisabwa n'amabwiriza y'imyubakire (New development started without permit, not complying with urban planning and/or building regulations requirements). Ni ukuvuga ko kugira ngo umuntu ahanishwe igihano cyo gusenyerwa, hagomba amakosa abiri, 1° kuba yatangiye inyubako nta ruhushya yabisabiye; 2° kuba iyo nyubako itajyanye n'igishushanyo mbonera cy'aho hantu (not complying with urban planning) cyangwa inyubako idakurikije ibisabwa n'amabwiriza y'imyubakire (not complying with building regulations requirements). Uyu mugereka ugaragaza ariko ko uwubatswe nta ruhushya (biri mu gaca ka 1.) ahanishwa amande iyo ibyo yubatswe bijyanye n'igishushanyo mbonera cy'aho hantu (complying with urban planning) cyangwa inyubako ikurikije ibisabwa n'amabwiriza y'imyubakire (complying with building regulations requirements). Ni ukuvuga ko kuba Nyirandayambaje Dorothee yarubatswe nta ruhushya ntabwo byari bihagije kugira ngo ahanishwe igihano cyo gukuraho inyubako yari yubatswe, ahubwo hagomba no kurebwa niba ibyo yubatswe byari bijyanye cyangwa bitajyanye n'igishushanyo mbonera, cyangwa niba byubahirije cyangwa bitubahirije amabwiriza y'imyubakire. [15] Urukiko rurasanga icyo abahagarariye Umujyi wa Kigali bagarukiraho, ni ukuvuga ko Nyirandayambaje Dorothee yahanishijwe igihano cyo gukurirwaho inyubako kubera ko yari yubatswe mu kagari (ni ukuvuga nta ruhushya afite). Ibi ni nabyo Urukiko Rwisumbuye rwashingiyeho, aho mu rubanza rwajuririwe mu gika cya 14, rwavuze ngo

“rurasanga kuba Nyirandayambaje Dorothee ubwe atabasha kugaragaza ko yari afite uburenganzira bwo kubaka inyubako asabira indishyi z’ibikoresho bye byasenyewe ntanaho yahera avuga ko ko yasenyewe bitubahirije amategeko atabanje kumenyeshwa kuko nk’uko ababuranira Umujyi wa Kigali babivuga yari kugenzurwa akanamenyeshwa igihe yari kuba yubaka yarahawe uruhushya ahubwo akanyuranya nibiri mu ruhushya yahawe. Nyamara ibi Urukiko Rwisumbuye ruvuga, ntirugaragaza aho biteganyijwe n’amategeko. Ahubwo nk’uko byasobanuwe, kuba umuntu yubatswe nta ruhushya ntabwo ubwabyo bihagije kugira ngo ahanishwe igihano cyo gukurirwaho inyubako, ahubwo hagomba no kugaragazwa ko iyo nyubako itajyanye n’igishushanyo mbonera cy’aho hantu (not complying with urban planning) cyangwa ko inyubako idakurikije ibisabwa n’amabwiriza y’imyubakire (not complying with building regulations requirements). Ibi ntaho abahagarariye Umujyi wa Kigali babigaragariza ibimenyetso. [16] Urukiko rurasanga mu iburanisha, abahagarariye Umujyi wa Kigali basobanuwe ko inyubako za Nyirandayambaje Dorothee zitari zubahirije igishushanyo mbonera cy’aho hantu,

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kubera ko Nyirandayambaje Dorothee yubatswe inyubako ariko agamije kuzazihindura inzu z’ubucuruzi n’ubwo ngo nta bimenyetso babifitiye kubera ko imiryango yarebaga imbere mu gipangu, ariko ngo nyuma yashoboraga guhindura agacamo imiryango ireba ku muhanda. Aha ariko nk’uko n’abahagarariye Umujyi wa Kigali babivuga, ni ugukeka ko yari kuzabikora, ariko nta kimenyetso bagaragaza ko koko izi nyubako (annexes) yari kuzihinduramo inzu z’ubucuruzi. Bityo nta kimenyetso Umujyi wa Kigali ugaragaza ko izi nyubako zitajyanye n’imiturire igenewe aha hantu ubutaka buri. Ntabwo kandi abahagarariye Umujyi wa Kigali bagaragaza ko hari andi mabwiriza y’imyubakire Nyirandayambaje Dorothee atari yakurikije, uretse gusa kuba atari afite uruhushya rwo kubaka izo nyubako. [17] Urukiko rurasanga na raporo yakozwe kuri iki kibazo, raporo y’inyandikomvugo ya JOC yo ku wa 18/08/2019, icyo igaragaza cyashingiweho Nyirandayambaje Dorothee asenyerwa, ni uko “annexes” 6 zose zakuweho kubera ko zari zarubatswe mu kajagari. Ntibasobanura mu kajagari icyo bishatse kuvuga, ariko byumvikana ko ari uko Nyirandayambaje Dorothee yari yazubatswe nta ruhushya yabanje kubisabira. [18] Urukiko rurasanga nk’uko byasobanuwe, kuba inyubako yubatswe nta ruhushya (without permit) bishobora guhanishwa gukuraho inyubako cyangwa bigahanishwa gucibwa amande, ariyo mpamvu Umujyi wa Kigali utagombaga kugarukira ku kuba Nyirandayambaje Dorothee yarutse atabanje kubisabira uruhushya, ahubwo wagombaga, mbere yo gukuraho inyubako, kugenzura ukareba niba inyubako zihuje n’igishushanyo mbonera ukamuca amande ukamusaba no guhagarika akabanza gusaba icyangombwa. Kuba atari uko byakozwe, kandi Umujyi wa Kigali ukaba udashobora kuvugurura ibyo Nyirandayambaje Dorothee n’umwunganira bavuga ko yahanishijwe igihano kirenze icyo yagombaga guhanishwa, bifite ishingiro kuko kubaka nta ruhushya ubwabyo bihagije ngo inyubako ihite ikurwaho. 1.2. Kumenya niba Nyirandayambaje Dorothee yarahanwe n’utabifitiye ububasha [19] Nyirandayambaje Dorothee avuga ko ikindi Urukiko Rwisumbuye rwirengagije ari uko yasenyewe n’utabifitiye ububasha: Ingingo ya 37 y’Iteka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n’imitunganyirize y’imijyi n’imyubakire, iteganya mu gika cya mbere ko umuntu ukoze ikosa ryo

mu myubakire, ahanishwa ibihano byo mu rwego rw'ubutegetsi biteganyijwe ku mugereka wa IV w'iri Teka ryavuzwe haruguru, hakurikijwe ibyiciro by'inyubako zakoreweho amakosa. Mu gika cya kabiri hateganyijwe ko ibihano bitangwa n'Akarere cyangwa Umujyi wa Kigali uretse igihano cyo gusenya inyubako cyemezwa na Komite Nyobozi y'Akarere cyangwa iy'Umujyi wa Kigali. Mu gika cya gatatu hateganyijwe ko icyakora, Urwego rw'Igihugu rufite imiturire n'imyubakire mu nshingano zarwo ruhana amakosa y'imyubakire, harimo no gutegeka ko inyubako isenywa, iyo Akarere cyangwa Umujyi wa Kigali bitahannye, nta mpamvu ifatika. Iyi ngingo igaragaza ko inzego zemerewe gutanga ibihano by'imyubakire ari Akarere n'Umujyi wa Kigali, ariko igihano cyo gusenya cyo kikabanza kwemezwa na Komite Nyobozi y'Akarere cyangwa y'Umujyi wa Kigali, cyangwa se urwego rw'igihugu rufite imiturire n'imyubakire mu nshingano zarwo mu gihe Akarere cyangwa Umujyi wa Kigali bitahannye. Kuba Nyirandayambaje Dorothée yarasenyewe n'ubuyobozi bw'Akagari (ES) ka Rukiri ya I nk'uko byasobanuwe haruguru, kandi katari mu nzego zafite ububasha bwo gutanga ibihano by'imyubakire, kakabikora bitabanje kwemezwa na Komite Nyobozi y'Akarere

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cyangwa y'Umujyi wa Kigali, bigaragara ko ibyo kakoze bitari m'ububasha bwako, bityo akaba ari amakosa akwiriye kuba intandaro yo kwishyura indishyi k'uruhande rw'Umujyi wa Kigali (Civilement responsable). [20] Umujyi wa Kigali uvuga ko Nyirandayambaje Dorothée atasenyewe n'urwego rutabifitiye ububasha, kubera ko amategeko yemera Akarere kuba kaha Umurenge ububasha bwo gukuraho inyubako. UKO URUKIKO RUBIBONA [21] Urukiko rurasanga atari ngombwa gusuzuma niba urwego rw'Umurenge cyangwa urw'Akagari rwari rufite ububasha bwo gukuraho inyubako ye, kubera ko uru Rukiko rwasanze ataragombaga guhanishwa icyo gihano. Ku bw'ibyo si ngombwa gusuzuma niba uwafashe igihano yari abifitiye ububasha kandi rwasanze atari icyo gihano yagombaga gufatirwa. 1.3. Gusuzuma niba Nyirandayambaje Dorothée yarasenyewe inzira ziteganywa n'amategeko zitubahirijwe [22] Nyirandayambaje Dorothée avuga ko ikindi na none Urukiko Rwisumbuye rwirengagije ari uko yasenye hatubahirijwe inzira ziteganywa n'amategeko: Mu gika cya 14 cy'urubanza rujuririrwa Urukiko rwanzuye ko Nyirandayambaje Dorothée atasenyewe mu buryo bunyuranije n'amategeko, ngo kuko bitari ngombwa kumugenzura no kubanza kumumenyesha ngo kuko nta ruhushya rwo kubaka yari yarahawe. Nubwo iyi mvugo ivuguruzanya nibyo Urukiko rwari rwagezeho mu gika cya 13 cy'urubanza rujuririrwa, aho rwanzuye ko rwasanze inyubako yasenye zinyuranye nizo yari yaraherewe uruhushya, ariko inanyuranije n'ibiteganywa n'ingingo ya 38 y'Iteka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire, ko igihano cyo gusenya gifatwa na Komite Nyobozi y'akarere cyangwa y'Umujyi wa Kigali hashingiwe kuri Raporo y'abashinzwe igenzura. Ingingo ikomeza isobanura ko urwego rwafashe icyemezo ku gihano cyo gusenya rugena n'uburyo bizakorwamo. Mu gihe cyose hatagaragazwa ko hari igenzura ryakorewe Nyirandayambaje Dorothée ngo abarishinzwe babe barakoreye Raporo Komite y'Akarere cyangwa y'Umujyi wa Kigali nabo bayishingireho bafate icyemezo cyo kumuhanisha gusenya inyubako ze ndetse ngo banagene uko bizakorwamo, kuba yarasenyewe bigaragaza ko byakozwe mu buryo bunyuranije n'ibiteganywa n'iyi ngingo mu gika

cyayo cya mbere. Kuba kandi hatagaragazwa ububasha bwo gushyira mu bikorwa igihano cyo gusenya Umurenge wa Remera waba warahawe na Komite nyobozi y'Akarere cyangwa y'umujiyi wa Kigali, nabyo bigaragaza ko igika cya kabiri cy'iyi ngingo kitubahirijwe. Byongeye kandi, kuba ishyingirwa mu bikorwa ryo gusenya ryarakozwe n'Ubuyobozi bw'Akagari ka Rukiri ya mbere, birashimangira ko amategeko yishwe, kuko Akagari katari kabifitiye ububasha. [23] Uhagarariye Umujiyi wa Kigali avuga ko Nyirandayambaje Dorothée yari kugenzurwa ndetse akanamenyeshwa mu gihe yari kubakaka yarahawe uruhushya rwo kubaka noneho akubaka binyuranije n'uruhushya yahawe.

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[24] Urukiko rurasanga atari ngombwa gusuzuma niba Nyirandayambaje Dorothée yarasenye inzira ziteganywa n'amategeko zitubahirijwe, kubera ko uru Rukiko rwasanze ataragombaga guhanishwa icyo gihano cyo gukurirwaho inyubako. Ku bw'ibyo si ngombwa gusuzuma niba mu kuyikuraho amategeko yarubahirijwe kandi rwasanze atari icyo gihano yagombaga gufatirwa. 1.4. Gusuzuma niba Nyirandayambaje Dorothée yaragombaga kubanza kumenyeshwa mbere yo gusenyerwa [25] Nyirandayambaje Dorothée avuga ko ikindi Urukiko Rwisumbuye rwirengagije ari uko yarasenye atabanje kumenyeshwa: Mu gika cya 14 n'icya 15 by'Urubanza rujuririrwa, Urukiko rugaragaza ko bitari ngombwa kubanza kumenyesha Nyirandayambaje mbere yuko asenyerwa, nyamara ibyo bikaba binyuranije n'ibiteganywa n'ingingo ya 39 al.1 y'Iteka rya Minisitiri No 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire, iteganya ko mbere yo gusenya, nyiri nyubako abanza gusabwa gusenya ibyo yubatswe binyuranije n'amategeko, atabikora Akarere, Umujiyi wa Kigali cyangwa Urwego rw'Igihugu rufite imituriye mu nshingano zarwo akaba aribyo bisenya iyo nyubako bigategeka nyir'inyubako kwishyura ikiguzi cy'ibyakoreshwe mu gusenya. Kuba ibiteganywa muri iki gika bitarubahirijwe mu gihe cyo gusenyerwa Nyirandayambaje Dorothée, biragaragarira buri wese ko amategeko atubahirijwe, bityo akaba akwiriye kubiherwa indishyi kuko umutungo we wangijwe, aranawamburwa ku maherere kandi nyamara binyuranije n'ibiteganywa n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda. [26] Me Shema Gerard avuga ko ntanaho Nyirandayambaje Dorothée yahera avuga ko yasenyewe bitubahirije amategeko atabanje kumenyeshwa aho Umujiyi wa Kigali ukabawaravuze ko yari kugenzurwa ndetse akanamenyeshwa mugihe yarikubakaka yarahawe uruhushya rwo kubaka noneho akubaka binyuranije n'uruhushya yahawe. Urukiko rero rwasanze Nyirandayambaje Dorothée yarubatswe inyubako muburyo budakurikije amategeko nk'uko bigaragara mu ibaruwa yo kuwa 09/10/2019 ndetse n'ingingo ya 39 y'Iteka rya Minisitiri N° 03/CAB.M/019 ryo kuwa 15/04/2019 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire. Ndetse n'umugereka wa IV w'iri teka kuri no 2 uteganya ko inyubako nshya yubatswe nta ruhushya igomba kuvanwaho. Bakaba basaba ko icyemezo cyafashwe nurukiko murubanza rujuririrwa kigomba kugumaho kuko cyafashwe muburyo bukurikije amategeko. [27] Urukiko rurasanga atari ngombwa gusuzuma niba Nyirandayambaje Dorothée yaragombaga kubanza kumenyeshwa mbere yo gusenyerwa, kubera ko uru Rukiko rwasanze

ataragombaga guhanishwa icyo gihano cyo gukurirwaho inyubako. Ku bw'ibyo si ngombwa gusuzuma niba mu kuyikuraho yaragombaga gubanza kumenyeshwa kandi rwasanze atari icyo gihano yagombaga gufatirwa.

2. Gusuzuma niba indishyi zaregowe ku rwego rwa mbere zatangwa [28] Me Rwigema Vincent wunganira Nyirandayambaje Dorothee avuga ko atanga ikirego yari yasabye guhabwa indishyi zingana na 14.728.640Frw zikomoka kw'isenyerwa ry'inyubako n'ibikoresho by'ubwubatsi bye byatwawe n'abamusenyeye, akaba yarabishingiraga ku mibare yagaragajwe na raporo y'igenagaciro yakozwe kuri icyo gikorwa. Yari yasabye kandi guhabwa indishyi z'akababatro zingana na 5.000.000frw, n'amafaranga y'ikurikiranarubanza angana na

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520.000frw n'ayigihembo cy'avoka angana na 1.000.000frw. Mu gika cya 16 cy'Urubanza rujuririrwa, Urukiko rwanzuye ko izo ndishyi nta shingiro zifite, nyamara ntirwatanga ubusobanuro bw'icyemezo cyarwo, bityo runyuranya n'inshingano yo gutanga ubusobanuro iteganywa n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo yaryo ya 151al.1 (3) kimwe n'iya 132 al.2 CPCCSA. Bashingiye ku biteganywa n'ingingo ya 39 al.2 y'Iteka ryavuzwe haruguru iteganya ko ibikoresho by'ubwubatsi bivuye ku nyubako yasenywe bifatirwa bigatezwa cyamunara cyangwa urwego rukabifashisha abatishoboye, kandi akaba nta kimenyetso cyuko ariko byagenze ku bikoresho byashenywe ku nyubako ze; kuba kandi yaragaraje ko yasenyewe mu buryo bunyuranije n'amategeko, barasaba ko icyemezo cyafashwe ku ndishyi cyahindurwa, akagenerwa indishyi zose yari yasabye ku rwego rwa mbere. [29] Me Shema Gerard uhagarariye Umujyi a Kigali avuga ko kubijyanye n'izindi ndishyi zisabwa muri uru rubanza yaba iz'akababaro, n'andi mafaranga yakoreshejwe muri uru rubanza, Nyirandayambaje Dorothee asaba ntashingiro bikwiye guhabwa. [30] Urukiko rurasanga Nyirandayambaje Dorothee asaba guhabwa indishyi zingana na 14.728.640Frw zikomoka kw'isenyerwa ry'inyubako n'ibikoresho by'ubwubatsi bye byatwawe n'abamusenyeye. Nyirandayambaje Dorothee agaragaza igenagaciro ryakozwe na Eng Rutazana Jerome ku wa 08/10/2019 rigaragaza ko ibikorwa byose byangijwe bifite agaciro k'amafaranga 14.782.640, aya mafaranga Umujyi wa Kigali ukaba ukwiye kuyamwishyura kubera ko nk'uko byasobanuwe, wamusenyeye ataricyo gihano yagombaga guhabwa, kandi ukaba utavuguruza iri genagaciro ryakozwe. [31] Urukiko amafaranga y'indishyi zari zasabwe ku rwego rwabanjirije uru, ni ukuvuga amafaranga 5.000.000frw y'indishyi z'akababaro Nyirandayambaje Dorothee asaba, ntiyayahabwa kuko atagaragaza aho ashingiye, kuko kuba yarashenyewe, yabisabiye amafaranga ahwanye n'ibikoresho byose yari yakoresheje, andi asaba akaba adasobanura uburyo ayabaramo. Naho amafaranga y'ikurikiranarubanza angana na 520.000 (harimo n'ayo yatanzeho ingwate y'amagarama) nayo ntagaragaza uburyo yayabazemo, bityo akaba agenewe amafaranga 100.000 y'ikurikiranarubanza, agasubizwa n'amafaranga 20.000 yatanzeho ingwate y'amagarama. Ku byerekeye amafaranga 1.000.000 y'igihembo cya Avoka, Urukiko rurasanga yayahabwa kubera ko ari mu rugero.

3. Gusuzuma amafaranga y'igihembo cya Avoka, ikurikiranarubanza n'ingwate y'amagarama [32] Me Rwigema Vincent uhagarariye Nyirandayambaje Dorothee avuga ko kuba Nyirandayambaje Dorothee akomeje gutanga amafaranga yo guhamba Avoka no gukurikirana urubanza kubera ihohoterwa yakorewe n'abakozi b'Umujiyi wa Kigali, arasaba ko ku rwego rw'ubujurire Urukiko rwategeka Umujiyi wa Kigali kumwishyura 1.000.000frw y'igihembo cy'Avoka na 540.000frw y'ikurikirana rubanza n'ingwate y'amagarama. [33] Me Shema Gerard uhagarariye Umujiyi wa Kigali avuga ko amafaranga y'ikurikirana rubanza ndetse n'igihembo cya Avoka asabwa na Nyirandayambaje Dorothee ntakwiye kuyahabwa kuko ntashingiro afite, ahubwo akaba asaba igihembo cya Avoka kingana n'amafaranga 1.000.000 n'amafaranga 500.000 y'ikurikiranarubanza.

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- [34] Urukiko rurasanga amafaranga 1.000.000 y'igihembo cy'Avoka wamuburaniye kuri uru rwego Nyirandayambaje Dorothee asaba, ntiyayahabwa yose kubera ko ari menshi, akaba agenewe mu bushishozi bw'urukiko amafaranga 500.000 y'igihembo cya Avoka. Akwiye kandi guhabwa amafaranga 50.000 y'ikurikiranarubanza, agasubizwa n'amafaranga 40.000 yatanzeho ingwate y'amagarama, aya mafaranga akaba agenwe mu bushishozi bw'Urukiko kubera ko amafaranga 500.000frw y'ikurikirana rubanza asaba ari menshi. [35] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka uhagarariye Umujiyi wa Kigali asaba ntayo yahabwa kubera ko ubujurire bwa Nyirandayambaje Dorothee bufite ishingiro, bityo akaba atabwira indishyi. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ubujurire bwa Nyirandayambaje Dorothee bufite ishingiro. [37] Rwemeje ko ubujurire bwuririye ku bundi bw'Umujiyi wa Kigali nta shingiro bufite. [38] Rwemeje ko imikirize y'urubanza rwajuririwe ihindutse kuri byose. [39] Rwemeje ko Nyirandayambaje Dorothee yahanishijwe igihano cyo gukurirwaho inyubako yari yubatswe ataricyo yari akwiye guhanishwa kubera impamvu zasobanuye. [40] Rutegetse Umujiyi wa Kigali guha Nyirandayambaje Dorothee amafaranga 14.728.640 y'agaciro k'ibyangijwe mu kumusenyera, amafaranga 1.000.000 y'igihembo cya Avoka, amafaranga 100.000 y'ikurikiranarubanza n'amafaranga 20.000 yatanzeho ingwate y'amagarama ku rwego rwabanjirije uru, amafaranga 500.000 y'igihembo cya Avoka, amafaranga 50.000 y'ikurikiranarubanza n'amafaranga 40.000 yatanzeho ingwate y'amagarama kuri uru rwego, yose hamwe akaba amafaranga 16.438.640. [41] Rutegetse ko amafaranga yatanzweho ingwate y'amagarama ahera mu isanduku ya Leta nk'amagarama y'uru rubanza.

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Prepared on 13 October 2026 · Esheria