KIZUNGU v KATISIGA N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC 00009/2020/CA– (Rukundakuvuga, P.J., Ngagi na Nyirandabaruta, J.) 29 Werurwe 2022]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Amasezerano y'ubwumvikane – Agaciro k'amasezerano y'ubwumvikane – Amasezerano y'ubwumvikane abaye hagati y'ababuranyi bose akemura ikibazo bari bafitanye, agasoza urubanza kandi akaba agomba kubahirizwa n'abayagiranye.

Incamake y'ikibazo: Kizungu yareze Katisiga mu Rukiko Rwisumbuye rwa Rubavu avuga ko umutungo yagombaga kuzungura yasanze wanditse kuri we, asaba Urukiko kumutegeka kumusubiza umutungo we yigabije. Mu rubanza rwaciwe n'urwo Rukiko, Urukiko rwasanze Uregwa afite icyemezo cy'Ubuyobozi bwari bushinzwe ubutaka mu cyahoze ari Umujyi wa Gisenyi kigaragaza ko ikibanza atuyemo gifite nimero 3099, naho ikibanza Urega aregera cyo gifite nimero 3103 kandi akaba atagaragaza ibimenyetso byerekana ko cyahawe nimero ebyiri zitandukanye, rwemeza ko ikirego cy'Urega nta shingiro gifite.

Urega yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko yashyikirikije Urukiko Rwisumbuye ibimenyetso bigaragaza ko ikibanza kiburanwa ari icye ariko ntirwabiha agaciro. Muri uru rubanz, hagobokeshejwemo Akarere ka Rubavu, Urega asaba ko kabazwa impamvu katanze ibyangombwa bitandukanye ku kibanza kimwe ndetse anagobokesha n'uwahagurishije kugirango atange ibisobanuro. Urukiko Rukuru rwemeje ko urubanza rwajuririwe rugumyeho.

Urega yandikiye Urwego rw'Umuvunyi asaba ko urubanza rwaciwe n'Urukiko Rukuru rusubirishwamo ku mpamvu z'akarengane rwoherezwa mu Rukiko rw'Ubujurire kugirango ruruburanishe mu mizi, nyuma y'uko byemejwe na Perezida w'Urukiko rw'Ikirenga amaze kubisabwa n'Urwego rw'Umuvunyi.

Iburanisha ryabaye mu ruhame hagenda hagobokeshwa abandi bantu bagira aho bahurira n'umutungo uburanwa barimo abatuye muri icyo kibanza ariko bakaba bafite ibyangombwa bifite nimero idahuye na nimero y'ikibanza kiburanwa. Urukiko rwasabye ababuranyi kugerageza gukemura ikibazo mu bwumvikane hashingiwe cyane cyane ku miterere y'urubanza. Ababuranyi basabye akanya kugira ngo bagerageze kuganira kuri iki kibazo, Urukiko rurabibemerera. Nyuma yo kwiherera, ababuranyi bose bamenyesha Urukiko ko bakemuye ikibazo mu bwumvikane, ko Akarere ka Rubavu kiyemeje gushakira Urega ikibanza mu Mujyi wa Gisenyi, gifite agaciro n'ubuso bingana nibura n'iby'ikibanza kiburanwa.

Incamake y'icyemezo: Amasezerano y'ubwumvikane abaye hagati y'ababuranyi bose akemura ikibazo bari bafitanye, agasoza urubanza kandi akaba agomba kubahirizwa n'abayagiranye. Bityo, amasezerano y'ubwumvikane yo ku wa 08/10/2021 yabaye hagati y'Urega n'Abaregwa asoje urubanza bari bafitanye.

Amasezerano y'ubwumvikane hagati y'ababuranyi bose asoje urubanza.
Amagarama aherera ku Isanduku ya Leta.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 151.
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 9.
Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu rubanza RC 0650/011/TB/GIS rwaciwe ku wa 30/09/2011, Kizungu Oswald yahawe uburenganzira bwo kuzungura inzu yasizwe na mushiki we Mukakabaka Immaculée, iherereye mu Mudugudu wa Kaminuza, Akagari ka Bugoyi, Umurenge wa Gisenyi, Akarere ka Rubavu, yubatswe mu kibanza nimero 3103.

[2] Kizungu Oswald yareze Katisiga Emile mu Rukiko Rwisumbuye rwa Rubavu avuga ko umutungo yagombaga kuzungura yasanze wanditse kuri Katisiga Emile, asaba Urukiko kumutegeka kumusubiza umutungo we yigabije. Mu rubanza RC 0286/011/TGI/RBV rwaciwe n'urwo Rukiko ku wa 08/12/2011, Urukiko rwasanze Katisiga Emile afite icyemezo cy'Ubuyobozi bwari bushinzwe ubutaka mu cyahoze ari Umujyi wa Gisenyi kigaragaza ko ikibanza atuyemo gifite nimero 3099, naho ikibanza Kizungu Oswald aregera cyo gifite nimero 3103 kandi akaba atagaragaza ibimenyetso byerekana ko cyahawe nimero ebyiri zitandukanye, rwemeza ko ikirego cya Kizungu Oswald nta shingiro gifite, ko Katisiga Emile agumana ikibanza atuyemo, Kizungu Oswald akamwishyura 300.000 Frw y'igihembo cya Abavoka bamuburaniye.

[3] Kizungu Oswald yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko yashyikirikije Urukiko Rwisumbuye rwa Rubavu ibimenyetso bigaragaza ko ikibanza kiburanwa ari icye ariko ntirwabiha agaciro, muri urwo rubanza hagobokeshwamo Akarere ka Rubavu, Kizungu Oswald asaba ko kabazwa impamvu katanze ibyangombwa bitandukanye ku kibanza kimwe, anagobokesha Nyirabibutsuhoze Annonciata asaba ko yabazwa impamvu yagurishije ikibanza kitari icye.

[4] Mu rubanza RCA 167/11/HC/MUS rwaciwe ku wa 07/05/2013, Urukiko Rukuru Urugereko rwa Musanze, rwemeje ko urubanza RC 0286/011/TGI/RBV rwajuririwe rugumyeho.

[5] Kizungu Oswald yandikiye Urwego rw'Umuvunyi asaba ko urubanza RCA 167/11/HC/MUS rwasubirwamo ku mpamvu z'akarengane, maze ku wa 17/09/2018, Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCA 167/11/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, rwasubirwamo ku mpamvu z'akarengane; Perezida w'Urukiko rw'Ikirenga yemeza ko urubanza rwoherezwa mu Rukiko rw'Ubujurire kugira ngo ruburanishwe. Urubanza ruhabwa RS/INJUST/RC 00009/2020/CA.

[6] Urubanza rwatangiye kuburanishwa ku wa 14/04/2021, uwo munsi Urukiko ruvuga ko urubanza ruzasomwa ku wa 14/05/2021, ariko bitewe n'uko umwe mu bacamanza bari bagize inteko yahinduriwe imirimo urubanza rutarasomwa, urubanza rwahawe indi nteko kugira ngo iruburanishe, iburanisha rishyirwa ku wa 06/07/2021 saa tanu n'igice (11:30). Guhera iyo tariki kugeza ku wa 08/09/2021, urubanza rwagiye rwimurwa kubera impamvu zitandukanye.

[7] Ku wa 08/09/2021, iburanisha ryabereye mu ruhame, Kizungu Oswald yunganiwe na Me Mugabo Fidèle, Katisiga Emile yunganiwe na Me Ruramira Bizimana Zébédée, Nyirabibutsuhoze Annonciata ahagarariwe Me Dushimire Jeannette, Akarere ka Rubavu gahagarariwe na Me Batsinda Aline, Urukiko rwasanze Akarere ka Rubavu kagomba gusobanura ibijyanye n'amateka y'ikibanza nimero 3103 n'ayi kibanza nimero 3099 kandi ayo mateka akaba agomba kugaragara ku ikarita ndetse agasobanurwa mu magambo muri raporo, kandi bikaba byashyizwe muri dosiye mbere kugira ngo

abandi baburanyi bagire icyo babivugaho. Akarere kasabwe na none kuzaza gafite technicien wako uzabasha kubisobanurira Urukiko.

[8] Ku wa 17/09/2021, urubanza rwaburanishirijwe mu ruhame, impande zose zunganiwe nka mbere, hasuzumwa raporo yatanzwe n'Akarere ka Rubavu ku bijyanye n'amateka y'ikibanza nimro 3103 n'ayi kibanza nimero 3099, nyuma yo kumva icyo ababuranyi bavuga kuri iyo raporo ndetse no kumva umukozi w'Akarere ka Rubavu ushinzwe imbibi n'ibipimo by'ubutaka, Urukiko rwafashe icyemezo cyo kugobokesha ku gahato Mugabo Pascal n'umugore we Karera Uwimana Rachel kuko Akarere ka Rubavu kagaragaje ko ari bo batuye mu kibanza gifite nimero 3103 cyahindutse nimero 799, urubanza rwimurirwa ku wa 27/09/2021 ariko ruza gushyirwa tariki 08/10/2021 saa yine n'igice (10:30) kugira ngo abagobokeshejwe mu rubanza babone igihe cyo kurutegura, bimenyeshwa ababuranyi bose muri IECMS.

[9] Ku wa 08/10/2021, iburanisha ryabaye mu ruhame, Mugabo Pascal na Karera Uwimana Rachel bahagarariwe na Me Twayigize Jean Claude, naho abandi baburanyi bunganiwe cyangwa bahagarariwe nka mbere. Muri iryo buranisha, nyuma yuko Me Twayigize Jean Claude agaragaje ibimenyetso birimo fiche cadastrale byerekana ko ikibanza nimero 799, Mugabo Pascal na Karera Uwimana Rachel batuyemo cyahoze gifite nimero 3105, Urukiko rwasabye ababuranyi kugerageza gukemura ikibazo mu bwumvikane hashingiwe cyane cyane ku miterere y'urubanza. Ababuranyi basabye akanya kugira ngo bagerageze kuganira kuri iki kibazo, Urukiko rurabibemerera. Nyuma yo kwiherera, ababuranyi bose bamenyesha Urukiko ko bakemuye ikibazo mu bwumvikane, ko Akarere ka Rubavu kiyemeje gushakira Kizungu Oswald ikibanza mu Mujyi wa Gisenyi, gifite agaciro n'ubuso bingana nibura n'iby'ikibanza 3103.

[10] Nyuma y'uko ababuranyi bumvikanye, Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko ababuranyi bakemuye ikibazo mu bwumvikane mu buryo bukurikira: Akarere ka Rubavu kiyemeje gushakira Kizungu Oswald ikibanza mu Mujyi wa Gisenyi, gifite agaciro n'ubuso bingana nibura n'iby'ikibanza 3103 kandi kakazakora raporo igashyirizwa Urukiko bitarenze ku wa 31/01/2022.

[11] Ku wa 29/01/2022, Me Batsinda Aline uburanira Akarere ka Rubavu yashyize muri dosiye imyanzuro y'inama ya Komite Nyobozi y'Akarere ka Rubavu yo ku wa 18/10/2021. Muri iyo myanzuro y'inama ku kibazo kijyanye n'ubutaka bwahawe Kizungu Oswald na Katisiga Emile, kigeze mu nkiko, abagize Komite Nyoboziy'Akarere ka Rubavu bemeje ko iki kibazo gikomeza inzira y'inkiko uburyozwe bwose bukabazwa uwagize uruhare mu makosa yakozwe ku bijyanye n'itangwa ry'ubwo butaka.

[12] Ku wa 16/03/2022, iburanisha ryongeye kuba mu ruhame, impande zose zihagarariwe nka mbere, hasuzumwa agaciro k'icyemezo cyafashwe na Komite Nyobozi y'Akarere ka Rubavu nyuma y'aho Urukiko rwemeje ko ababuranyi bakemuye ikibazo mu bwumvikane.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya agaciro k'amasezerano y'ubwumvikane yabaye hagati y'ababuranyi ku wa 08/10/2021

[13] Ingingo ya 9, igika cya 3, 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 ibukurikira: umucamanza ashobora gushishikariza ababuranyi gukoresha ubwunzi iyo abona ko ari bwo buryo buboneye mu kurangiza impaka. Ashobora kubunga ubwe cyangwa akabohereza mu bwunzi, agasubika urubanza mu gihe ubwunzi burimo gukorwa.

[14] Ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ibikurikira: amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. (…).

[15] Ingingo ya 151, igika cya mbere, agace ka 4º, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 itaganya ibikurikira: ibyemezo by'ubucamanza bigomba gukurikizwa n'abo bireba bose, zaba inzego z'ubutegetsi bwa Leta cyangwa abantu ku giti cyabo. Ntibishobora kuvuguruzwa keretse binyuze mu nzira no mu buryo buteganywa n'amategeko.

[16] Nk'uko byibukijwe haraguru, mu iburanisha ryo ku wa 08/10/2021, Urukiko rumaze kubona ko inzira y'ubwumvikane ari bwo buryo buboneye mu kurangiza impaka ababuranyi bafitanye, nk'uko biteganywa n'ingingo ya 9, igika cya 3, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, rwashishikarije ababuranyi kureba uburyo ikabazo cyabo cyakemuka mu mwumvikane, rubaha akanya ko kubitekerezaho, nyuma yaho babwira Urukiko ko bamaze kumvikana. Urukiko rushingiye ku bwumvikane bwabo rwafatiye icyemezo mu ntebe, rwemeza ko ababuranyi bakemuye ikibazo mu bwumvikane mu buryo bukurikira: Akarere ka Rubavu kiyemeje gushakira Kizungu Oswald ikibanza mu Mujyi wa Gisenyi, gifite agaciro n'ubuso bingana nibura n'iby'ikibanza 3103 kandi kakazakora raporo igashyirizwa Urukiko bitarenze ku wa 31/01/2022; bivuze ko ubwumvikane bwabo busoje urubanza RS/INJUST/RC 00009/2020/CA rwari muri uru Rukiko kandi bugomba kubahirizwa, nk'uko biteganywa n'ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano.

[17] Ku byerekeye agaciro k'icyemezo cyafashwe n'inama ya Komite Nyobozi y'Akarere ka Rubavu yo ku wa 18/10/2021, ku kibazo cy'ubutaka bwahawe Kizungu Oswald na Katisiga Emile, yemeje ko iki kibazo gikomeza inzira y'inkiko uburyozwe bwose bukabazwa uwagize uruhare mu makosa yakozwe ku bijyanye n'itangwa ry'ubwo butaka, nyuma y'uko mu iburanisha ryo ku wa 16/03/2022, abuburanyi basanze icyo cyemezo nta gaciro cyagira igihe ibyo kivuga Urukiko rwabigennye ukundi, ahubwo basanga icyemezo cy'Urukiko kigomba kubahirizwa uko kiri.

[18] Urukiko, rushingiye ku biteganywa n'ingingo ya 151, igika cya mbere, agace ka 4º, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, rurasanga Akarere ka Rubavu kagomba kubahiriza icyemezo cy'Urukiko nk'uko cyafashwe mu iburanisha ryo ku wa 08/10/2021, kakaba kagomba gushakira Kizungu Oswald ikibanza mu Mujyi wa Gisenyi, gifite agaciro n'ubuso bingana nibura n'iby'ikibanza 3103.

[19] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga amasezerano y'ubwumvikane yabaye hagati y'ababuranyi bose imbere y'uru Rukiko mu iburanisha ryo ku wa 08/10/2021 yarakemuye ikibazo ababuranyi bari bafitanye, akaba rero asoje urubanza RS/INJUST/RC 00009/2020/CA rwari mu Rukiko rw'Ubujurire, kandi akaba agomba kubahirizwa n'abayagiranye nk'uko biteganywa n'ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ryibukijwe haruguru.

III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko amasezerano y'ubwumvikane yo ku wa 08/10/2021 yabaye hagati ya Kizungu Oswald, Katisiga Emile, Nyirabibutsuhoze Annonciata, Akarere ka Rubavu, Mugabo Pascal na Karera Uwimana Rachel asoje urubanza RS/INJUST/RC 00009/2020/CA rwari mu Rukiko rw'Ubujurire.

[21] Rwemeje ko ibyo ababuranyi bavuzwe mu gika kibanziriza iki bumvikanye ku wa 08/10/2021, by'uko Akarere ka Rubavu kagomba gushakira Kizungu Oswald ikibanza mu Mujyi wa Gisenyi, gifite agaciro n'ubuso bingana nibura n'iby'ikibanza 3103, bigomba kubahirizwa.

[22] Ruvuze ko amagarama aherera ku Isanduku ya Leta.