

UBUSHINJACYAHA v. MWIZERWA

[Rwanda URUKIKO RUKURU – RPA 0921/13/HC/KIG (Bukuba P.J) 07 Werurwe 2014.]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – igihe fatizo cyo kujurira – Mu gihe isomwa ry'urubanza ryimuwe ariko umuburanyi ntamenyeshwe italiki ryimuriweho, igihe fatizo cyo kubara igihe yajuririye kiba icyo yamenyesherejweho imyanzuro y'urubanza aho kuba italiki rwasomeweho – Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 176 n'ya 177.

Amategeko mpanabyaha – Impamvu nyoroshyacyaha zemejwe n'Urukiko rubanza – Kuba ibyo uwajuriye asaba yarabihawe mu rwego rwa mbere kandi ntagire icyo anenga ku buryo byakozwe ni impamvu ituma hatabaho guhinduka kw'icyemezo.

Incamake y'ikibazo: Mwizerwa yakurikiranyweho icyaha cyo kunyereza umutungo wa Leta n'icyo gukora no gukoresha inyandiko mpimbano mu Rukiko Rwisumbuye rwa Nyarugenge ku rwego rwa mbere. Mu rubanza rwaciwe ku wa 10/1/2012 yahamwe n'ibyaha maze ahanishwa igifungo cy'inyaka ine. Nyuma yo kutishimira icyo cyemezo yajuririye Urukiko Rukuru ku wa 06/08/2012.

Mu iburanisha, Ubushinjacyaha bwabwabye ko ubujurire bwa Mwizerwa butakwagirira kuko bwatanzwe nyuma y'ibihe ntarengwa ariko Mwizerwa we akavugaga ko umunsi yari gusomerwaho yaje .ntiyasomerwa ndetse ntiyanabwirwa undi munsi ruzasomerwaho maze aza kumenya umunsi rwasomeweho ubwo yahabwaga kopi yarwo ayazaniye kuri gereza. Yakomeje avuga ko kandi anenga kuba yarabihawe ibihano bikomeye kandi yaraburanye yemera icyaha ndetse ari n'ubwa mbere yari akoze icyaha no kuba atarageze ku mugambi wo gukora icyaha bityo agasaba kugabanyirizwa ibihano.

Incamake y'icyemezo: 1. Iyo umunsi urubanza rwagombaga gusomerwaho atari wo rwasomeweho ndetse hakaba nta nyandiko mvugo igaragara muri dosiye igaragaza icyakozwe uwo munsi mu mwanya wo kurusoma ntihanagaragare niba uwajuriye yari ahari ngo amenye umunsi isomwa ryimuriweho, kandi hakaba nta n'ikindi kigaragaza igihe yamenyesherejwe iyo mikirize. Kubera iyi mpamvu, itariki fatizo Urukiko ruheraho rubara iminsi ntarengwa yo kujurira n'iyi uregwa avuga ko yamenyesherejweho imirikirize y'urubanza. Kuba uregwa yaramenyesherejwe imikirize y'urubanza 18/07/2012 akajurira kuwa 6/8/2012 bigaragara ko igihe cy'ukwezi giteganywa n'itegeko cyari kitararenga, kubera iyo mpamvu icyifuzo cy'Ubushinjacyaha cyo kutakira iki kirego kubera ko ibihe byo kujurira byaba byarangiye ntigihawe ishingiro.

2. Kuba ibyo uwajuriye yasabye byarahawe agaciro n'Urukiko rubanza kandi ntihanengwe uburyo byakozwemo ni impamvu ituma hatabaho guhindura icyemezo mu rukiko rujuririrwa.

**Ubuujurire burakiriwe ariko nta shingiro bufite.
Urubanza rujuririrwa ntiruhindutse.**

Amategeko yashingiweho:

Itegeko 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y’imanza nshinjabyaha, ingingo ya 176 n’iya 177.

Nta rubanza rwifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ubushinjacyaha burega Mwizerwa Etienne, icyaha cyo kunyereza umutungo wa Leta, n’icyo gukora no gukoresha inyandiko mpimbano,ku rwego rwa mbere urwo Rukiko rwemeza mu rubanza rwaciwe ku wa 10/1/2012, ko ibyo byaha bimuhama, ahanishwa igihano cy’igifungo cy’imyaka ine, Mwizerwa Etienne ntiyishinye icyo cyemezo, akijuririra kuwa 06/08/2012.

[2] Umunsi wo kuburana ku rwego rw’ubujurire,Ubushinjacyaha bwavuze ko busanga Mwizerwa Etienne yarajuriye nyuma y’ibihe ntarengwa byo kujurira biteganijwe n’itegeko, asaba ko ikirego cye cy’ubujurire kitakwakirwa, Mwizerwa Etienne akavuga ko umunsi yari yabwiwe kuzasomerwaho yaje ntasomerwe ndetse ntanabwirwe undi munsi ruzasomerwaho, akaba yaramenye umunsi rwasomeweho ubwo yahabwaga kopi yarwo ayizaniwe kuri Gereza.

[3] Mwizerwa Etienne yanasobanuye ko anenga kuba yarahawe ibihano bikakaye kandi yaraburanye yemera icyaha, ndetse ari n’ubwa mbere yari akoze icyaha, akaba ataranageze no ku mugambi we wo gukora icyaha, agasaba kugabanyirizwa ibihano, ngo kuko yumva n’imyaka itatu amaze afunze yaramaze kugororoka, akaba asaba kugabanyirizwa igihano agasubira mu muryango nyarwanda.

[4] Ubushinjacyaha buvuga ko busanga iyo mpamvu y’ubujurire atari yo, ngo kuko yarezwe ibyaha bibiri,asabirwa igihano cy’igifungo cy’imyaka 16, ariko urukiko rumuhanisha igifungo cy’imyaka 4 gusa, bityo bukaba busanga icyemezo kijuririrwa kidakwiye guhindurwa.

[5] Ibibazo bigomba gusubizwa muri uru rubanza bijyanye no kumenya niba Mwizerwa Etienne yarajuriye nyuma y’ibihe biteganijwe n’amategeko,ku buryo ubujurire bwe butakwakirwa nk’uko Ubushinjacyaha buburana bubivuga,no kumenya niba akwiye kugabanyizwa ibihano ku rwego rw’ubujurire.

II. ISESENGURA RY’IBIBAZO BIGIZE URUBANZA

A. Ku kijyanye n’ibihe ntarengwa byo kujurira

[6] Urubanza Mwizerwa Etienne ajuririra, rwaciwe ku wa 10/1//2012,nk’uko kopi y’urwo rubanza igaragara kuri cote ya 51 ibigaragaza, akaba yararujuriye kuwa 06/08/2012,aha akaba ari naho Ubushinjacyaha bwashingiye buvuga ko yajuriye nyuma y’ibihe ntarengwa biteganijwe n’itegeko, ariko Mwizerwa Etienne we akaba asobanura ko yajuriye mu bihe biteganijwe n’itegeko, ngo kuko yajuriye nyuma yo kubona kopi y’urubanza n’aho ubundi akaba yari

yaragiye gusomerwa ku itariki yari yarahawe, agasanga Umucamanza wamuburanishije yarwaye, ntamenyeshwe umunsi iryo somwa ryimuriweho, akaza kuzanirwa kopi kuri gereza kuwa 18/7/2012, ari naho yahereye ajurira kuwa 6/8/2012.

[7] Urukiko rukaba rusanga ingingo ya 176 y'itegeko numero 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza nshinjabyaha, iteganya ko: "kujurira bigomba gukorwa mu gihe kitarengeje ukwezi kumwe(1) uhereye ku itariki urubanza rwaciriweho ku muburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga", naho ingingo ya 177 y'iryo tegeko ikaba iteganya mu gika cyayo cya 5 ko : "iyu ujuriye afunze, ubujurire bwe ashobora kubukorera muri gereza mu nyandiko yandikira umwanditsi w'Urukiko abinyujije ku muyobozi wa Gereza. Uyu muyobozi ashira umukono kuri urwo rwandiko agaragaza itariki arushyirijweho ari nayo ifatwaho umunsi w'ijurira. Yihutira koherereza ubwo bujurire urukiko rugomba kububuranisha".

[8] Rusanga ibaruwa y'ubujurire ya Mwizerwa Etienne, Ubuyobozi bwa Gereza bwariyishyizeho umukono kuwa 6/8/2012, kandi nk'uko byavuzwe hejuru urubanza yajuririraga rwarasomwe tariki ya 10/1/2012, uko bigaragara uhereye kuri ayomatariki, igihe ntarengeje cy'ukwezi kikaba cyaba cyararenze, gusa bikaba bigaragara ko iburanisha ry'uru rubanza ku rwego rwa mbere ryo kuwa 9/11/11, ryafashe icyemezo cyo kuzasoma uru rubanza tariki ya 8/12/11 nk'uko icyo cyemezo kigaragara muri dosiye kuri cote ya 45 kibigaragaza, uwo munsi ariko akaba atari wo rwasomeweho ndetse hakaba nta nyandiko mvugo igaragara muri dosiye igaragaza icyakozwe uwo munsi mu mwanya wo kurusoma, kandi icyo nyandiko mvugo ari yo yagaragariza Urukiko niba uwajuriye yari ahari ngo amenye umunsi isomwa ryimuriweho, ndetse rukaba runasanga nta n'ikindi kigaragaza igihe yamenyesherejwe icyo mikirize, uwajuriye we akaba mu ibaruwa ye y'ubujurire avugaga ko yamenyesherejwe icyo mikirize kuwa 18/7/2012, icyo tariki akaba ari icyo y'ifatwaho Urukiko ruherereye rubara iminsi ntarengeje yo kujurire, bityo kuwa kuri icyo tariki kugeza kuwa 6/8/2012 bikaba bigaragara ko igihe cy'ukwezi giteganywa n'itegeko cyari kitararengeje, ari nayo mpamvu ikifuzo cy'Ubushinjacyaha cyo kutakira iki kirego kubera ibihe byo kujurira byaba byararangiyeye kidahawe ishingiro.

B. Ku kijyanye no kugabanyirizwa ibihano.

[9] Mwizerwa Etienne yanasobanuye ko anenga kuba yarahawe ibihano bikakaye kandi yaraburanye yemera icyaha, ndetse ari n'ubwo mbere yari akoze icyaha, akaba ataranageze no ku mugambi we wo gukora icyaha, agasaba kugabanyirizwa ibihano, ngo kuko yumva n'imyaka itatu amaze afunze yamaze kugororoka, akaba asaba kugabanyirizwa igihano agasubira mu muryango nyarwanda.

[10] Ubushinjacyaha buvugaga ko busanga icyo mpamvu y'ubujurire atari icyo, ngo kuko yarezwe ibyaha bibiri, asabirwa igihano cy'igifungo cy'imyaka 16, ariko urukiko rumuhanisha igifungo cy'imyaka 4 gusa, bityo bakaba basanga icyemezo kijuririrwa kitahindurwa.

[11] Uru Rukiko rukaba rusanga ku rwego rwa mbere, nyuma yo gusesengura rugasanga ibyaha Mwizerwa Etienne yarezwe, ari icyo kunyereza umutungo wa Leta n'icyo gukora no gukoresha inyandiko mpimbano, bigize impurirane y'imbonezamugambi, yateganywaga mu ngingo ya 93 y'igitabo cya 1 cy'amategeko ahana ibyaha mu Rwanda cyakoreshwaga icyo gihe uru rubanza rucibwaga, rwarafashe icyemezo cyo kumuhanisha igihano cyari giteganyijwe mu ngingo ya 220 y'icyo gitabo, kuko rwasanze icyo kiremereye, ariko runasesenguye imiburanire

ya Mwizerwa Etienne, waburanye yemera icyaha, ari ubwa mbere yari akoze icyaha, rubishingiraho nk'impamvu nyoroshya cyaha, rumugabanyiriza ibihano, rushingiye ku rwego rw'amategeko ku byateganywaga mu ngingo ya 83 y'icyo gitabo.

[12] Kubera ibimaze gusobanurwa hejuru, rusanga ibyo Mwizerwa Etienne asaba yarabigenewe ku rwego rwa mbere, kandi akaba ntacyo yagaragaje anenga uburyo byakozwemo kuri urwo rwego, ari nayo mpamvu icyo cyemezo kidahindutse.

III. ICYEMEZO CY'URUKIKO RUKURU

[13] Urukiko rwemeye kwakira ubujurire bwatanzwe na Mwizerwa Etienne, ariko rubusuzumye rusanga nta shingiro bufite.

[14] Rwemeje ko urubanza rujurirwa rudahindutse.