

KANZAYIRE v. NYIRABIZIMANA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0070/12/CS (Kanyange, P.J., Mukandamage na Munyangeri, J.) 21 Kamena 2013]

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Inzira z'ubujurire mu Rukiko rw'Ikirenga – Iyakirwa ry'ikirego kigamije gutambamira urubanza – Ihame ry'uko itegeko ritagira inkurikizi ku bikorwa byabaye mbere y'uko rijyaho – Mu gukemura ikibazo cy'iyakirwa ry'ikirego gitambamira urubanza mu gihe itegeko ryakurikizwaga igihe ikirego cyatangwaga ritandukanye n'irikurikizwa mu gihe cy'iburanisha, hagomba gukurikizwa iryariho ikirego gitangwa – Izindi nzira zigamije gusaba ko urubanza rwaciwe n'Urukiko rw'Ikirenga rwongera kuburanishwa ntizemewe, uretse iyo gusubirishamo ingingo nshya urubanza rwaciwe burundu yonyine – Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavugururwe kugeza ubu, ingingo ya 144 – Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga – Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 84.

Incamake y'ikibazo: Kanzayire Epiphane, umugore wa Musoni Ndamage Thadée yatambamiye urubanza rwaciwe n'Urukiko rw'Ikirenga hagati ya Nyirabizimana Zilipa na Musoni Ndamage Thadée avuga ko atarumenye kandi rukaba rubangamiye inyungu ze kuberako imikirize yarwo yemeje ko Nyirabizimana afite uburenganzira busesuye bwo gucunga imitungo Ndamage Eliab ndetse iyo mitungo ikajya mu mutungo rusange wa Ndamage Eliab na Nyirabizimana.

Nyirabizimana Zilipa yatanze inzitizi yo kutakira ikirego cya Kanzayire Epiphane avuga ko inzira yo gutambamira urubanza itemewe mu Rukiko rw'Ikirenga ko kandi ariwo murongo uru Rukiko rwafashe kuri iyi ngingo mu rubanza RCOM 0010/09/CS rwa Rusekerampunzi v. Rumanyika rwaciwe kuwa 30/04/2010. Avuga kandi ko n'iyi nzira yaba yemewe, Kanzayire atemerewe gukoresha inzira y'itambama ku rubanza umugabo we Musoni yatsinzwe. Yongeraho ko n'iyi urega yakwitwaza ko yatanze ikirego cye hagikoreshwa Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryagenaga imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, iyo nzira yo gutambamira urubanza rwaciwe n'Urukiko rw'Ikirenga ntaho yari iteganyijwe.

Kanzayire na Musoni Ndamage Thadée n'ababunganira bo bavuga ko izo nzitizi nta shingiro zifite bagashimangira ko Urukiko rw'Ikirenga ari urukiko rusanzwe (jurisdiction ordinaire) rukaba rugomba gukurikiza imiburanishirize y'izindi nkiko zisanzwe ntirugire inzira y'ubujurire n'imwe rusubiza inyuma kuko narwo ruburanisha imanza mu mizi. Bongeraho ko urubanza rwaciwe n'uru Rukiko uburanira Nyirabizimana asaba ko rwareberwaho, ari rwo rwonyine rwafashe icyemezo ku kibazo kiburanwa, rukaba rero rutafatwa nk'urwatanze umurongo w'Urukiko kuri icyo kibazo.

Incamake y'icyemezo: 1. Ku bijyanye no kumenya itegeko rigomba gukurikizwa mu gukemura ikibazo cy'iyakirwa ry'ikirego gitambamira urubanza ryakurikizwaga igihe ikirego cyatangwaga

ritandukanye n'irikurikizwa mu gihe cy'iburanisha, hagomba gukurikizwa iryariho igihe ikirego cyatangwaga.

2. Izindi nzira zigamije gusaba ko urubanza rwaciwe n'Urukiko rw'Ikirenga rwongera kuburanishwa ntizemewe, uretse iyo gusubirishamo ingingo nshya urubanza rwaciwe burundu yonyine, ikirego cyo gutambamira urubanza rwaciwe n'Urukiko rw'Ikirenga kikaba kitakirwa.

**Ikirego nticyakiriwe.
Amagarama aherereye ku watambamiye urubanza.**

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, ingingo ya 144.

Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 84.

Imanza zifashishijwe:

Khalid v. Ahmed n'abandi, RC 0002/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 19/03/2010.

Leta y'u Rwanda v. Karangwa, RADA 0001/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 17/09/2010.

Kagoyire v. Abdallah n'abandi, RC 0002/05/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 25/10/2007.

Rusekerampunzi v. Rumanyika, RCOM 0010/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 30/04/2010.

Rudasumbwa v. Leta y'u Rwanda n'abandi, RADA 0031/12/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 17/05/2013.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Urukiko rw'Ikirenga rwaciye urubanza RCAA 0015/09/CS kuwa 29/04/2011 hagati ya Nyirabizimana Zilipa na Musoni Ndamage Thadée rwemeza ko Nyirabizimana afite uburenganzira busesuye bwo gucunga imitungo iri mu bibanza n° 579/Quartier Commercial na 710/Kacyiru kandi iyo mitungo ikajya mu mutungo rusange wa Ndamage Eliab na Nyirabizimana ikiyongera kuyagenwe n'Urukiko Rukuru mu rubanza rwajuririwe, ibyo bibanza bikava ku mazina ya Musoni Ndamage Thadée bikandikwa kuri Nyirabizimana. Rwemeje kandi ko ikibanza n° 711/Kacyiru kigumanwa na Musoni Ndamage Thadée.

[2] Kanzayire Epiphane, umugore wa Musoni Ndamage Thadée yatambamiye urwo rubanza avuga ko atarumenye kandi rubangamiye inyungu ze.

[3] Nyirabizimana Zilipa yatanze inzitizi yo kutakira ikirego cya Kanzayire avuga ko inzira yo gutambamira urubanza itemewe mu Rukiko rw'Ikirenga, ko kandi niyo yaba yemewe, Kanzayire atemerewe gukoresha inzira y'itambama ku rubanza umugabo we Musoni yatsinzwe.

[4] Avuga ko kandi nta bubasha (qualité) Kanzayire afite bwo kurega Nyirabizimana kuko atari mu bazungura ba Ndamage, ko kandi n'igihe yatangiye ikirego kigomba gusuzumwa kuko yari azi urubanza rwaburanwaga n'umugabo we.

[5] Ababuranira Kanzayire na Musoni bo bavuga ko inzitizi zatanzwe na Nyirabizimana nta shingiro zifite.

[6] Urubanza rwaburanishijwe mu ruhamwe kuwa 09/05/2013, Kanzayire Epiphane aburanirwa na Me Rukangira Emmanuel na Me Twiringiyemungu Joseph, Me Basominger Alberto, Me Kayitare Serge na Me Mhayimana Isaië baburanira Musoni Ndamage Thaddée, naho Nyirabizimana Zilipa aburanirwa na Me Rwagatare Janvier.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba ikirego cya Kanzayire Epiphane, gitambamira urubanza RCAA 0015/09/CS gishobora kwakirwa.

[7] Rwagatare Janvier uburanira Nyirabizimana avuga ko ikirego cya Kanzayire kidakwiye kwakirwa, kubera ko inzira yo gutambamira urubanza rw'abandi itemewe mu Rukiko rw'Ikirenga.

[8] Asobanura ko, uretse inzira y'ubujurire, iyo gusubirishamo n'iyi gusubirishamo urubanza ingingo nshya zemewe, nta na hamwe inzira yo gutambamira urubanza rw'abandi iteganyijwe mu itegeko ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko bigaragara mu ngingo zaryo za 31, 32 na 33.

[9] Uburanira Nyirabizimana avuga ko kandi niyo urega yakwitwaza ko yatanze ikirego cye hagikoreshwa Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryagenaga imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, iyo nzira yo gutambamira urubanza rwaciye n'Urukiko rw'Ikirenga ntaho yagaragaraga muri iryo tegeko ngenga nk'uko byateganywaga n'ingingo ya 84 yaryo, ko kandi Urukiko rw'Ikirenga rwamaze kubifataho icyemezo mu rubanza RCOM 0010/09/CS.

[10] Me Rukangira Emmanuel na Me Twiringiyemungu Joseph baburanira Kanzayire bavuga ko ikirego cye gitambamira urubanza RCAA 0015/09/CS gikwiye kwakirwa kuko harebwe itariki icyo kirego cyatangiweho yo kuwa 26/06/2012, itegeko ngenga n° 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru ryatangiye gukurikizwa ku itariki ya 09/07/2012 ritareba uru rubanza, ko hagomba gukurikizwa Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryavuzwe haruguru kubera ko ingingo yaryo ya 84 itabuzaga abantu batabaye ababuranyi mu rubanza kurutambamira.

[11] Basobanura ko Urukiko rw'Ikirenga nk'urukiko ruburanisha imanza mu mizi (Jurisdiction de fond), rugomba gukurikiza inzira z'imburanishirize (procédures) zisanzwe zikurikizwa

n'izindi nkiko ziburanisha mu mizi, ntirugire inzira n'imwe rsubiza inyuma, maze rukakira ikirego kigamije itambama cy'uwo baburanira.

[12] Bavuga kandi ko urubanza rwaciwe n'uru rukiko uburanira Nyirabizimana asaba ko rwareberwaho, ari rwo rwonyine rwafashe icyemezo ku kibazo kiburanwa, rukaba rero rutafatwa nk'urwatanze umurongo w'urukiko kuri icyo kibazo.

[13] Me Mhayimana uburanira Musoni Ndamage Thaddée avuga ko ingingo ya 144 y'Itegeko Nshinga iha uru rukiko ububasha bwo kuburanisha uru rubanza. Avuga ko kandi hashingiwe ku ngingo ya 143 y'Itegeko Nshinga, Urukiko rw'Ikirenga ari urukiko rusanze (jurisdiction ordinaire) rukaba rugomba gukurikiza imiburanishirize y'izindi nkiko zisanze kuko narwo ruburanisha imanza mu mizi. Avuga na none ko ingingo ya 8 y'amasezerano mpuzamahanga yerekeranye n'uburenganzira bwa muntu ibuza ivangura, ko rero kuba inzira y'itambama yemewe mu zindi nkiko, nta mpamvu itakwemerwa mu Rukiko rw'Ikirenga.

UKO URUKIKO RUBIBONA

[14] Ku bijyanye no kumenya itegeko rigomba gukurikizwa mu gukemura ikibazo cy'iyakirwa ry'ikirego cya Kanzayire cyagiweho impaka, inyandiko itanga ikirego igaragaza ko cyatanze kuwa 11/06/2012 Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru ritangira gukurikizwa kuwa 09/07/2012, bityo Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryakurikizwaga igihe ikirego cyatangwaga akaba ari ryo rigomba gukurikizwa.

[15] Ku birebana n'inzira z'ijurira (voies de recours) ziteganyirijwe imanza zaciwe n'Urukiko rw'Ikirenga, ingingo ya 144 y'Itegeko Nshinga iteganya ko "Urukiko rw'Ikirenga ni rwo rukiko rukuriye izindi mu gihugu. Ibyemezo byarwo ntibijuririrwa uretse ibyerekeye imbabazi n'isubirwamo ry'urubanza. Byubahirizwa n'abo bireba bose, zaba inzego za Leta, abayobozi bose b'imirimo ya Leta, aba gisiviri, aba gisirikare, abo mu rwego rw'ubucamanza n'abantu ku giti cyabo".

[16] Ingingo ya 84 nayo y'Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryagenaga imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga igihe ikirego gisuzumwa cyatangwaga yateganyaga ko "Bitabangamiye uburyo buteganyijwe n'amategeko bwo gusubirishamo urubanza rwaciwe burundu, urubanza rwaciwe n'Urukiko rw'Ikirenga ntirushobora kongera kuburanishwa, keretse gusa iyo ari ugukosora imyandikire y'icyo bibeshyeho cyangwa se gusobanura urubanza rwaciwe mu buryo butumvikana cyangwa bushobora kumvikana mu buryo bunyuranye".

[17] Urukiko rurasanga, harebwe ibiteganywa n'ingingo zimaze kuvugwa haruguru byumvikana neza ko izindi nzira zigamije gusaba ko urubanza rwaciwe n'Urukiko rw'Ikirenga rwongera kuburanishwa zitemewe, uretse iyo gusubirishamo ingingo nshya urubanza rwaciwe burundu yonyine.

[18] Uyu murongo kandi niwo wafashwe n'uru Rukiko mu manza zitandukanye aho rwagaragaje ko inzira yo gutambamira urubanza rwaciwe n'Urukiko rw'Ikirenga itemewe¹ ndetse no mu itegeko ngenga rishya n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, mu birego bishobora gushyikirizwa Urukiko rw'Ikirenga, inzira yo gutambamira urubanza rwaciye n'uru rukiko ntayiteganyijwe.

[19] Hashingiwe ku byasobanuwe haruguru, Urukiko rurasanga ikirego cya Kanzayire Epiphane gitambamira urubanza RCAA 0015/09/CS rwaciwe n'Urukiko rw'Ikirenga kitagomba kwakirwa kuko cyatanzwe mu buryo bunyuranije n'amategeko, bityo akaba atari ngombwa gusuzuma izindi mpamvu zatanzwe.

III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko ikirego cya Kanzayire Epiphane gitambamira urubanza RCAA 0015/09/CS kitakiriwe.

[21] Rumutegetse gutanga 42.800 frw y'amagarama y'uru rubanza, atayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

¹ RC 0002/09/CS rwa Khalid Foz v. Ahmed Abdulatif et ctrs rwaciwe kuwa 19/03/2010, RADA 0001/09/CS rwa Leta y'u Rwanda v. Karangwa Eugène rwaciwe kuwa 17/09/2010, RC 0002/05/CS rwa Kagoyire Christine v. Abdallah Sultan et crts rwaciwe kuwa 25/10/2007, RCOM 0010/09/CS rwa Rusekerampunzi v. Rumanyika rwaciwe kuwa 30/04/2010, RADA 0031/12/CS rwa Rudasumbwa Fabrice v. Leta y'u Rwanda, Banki ya Kigali, Nkusi Eugène na Nzirabatinyi Patrick rwaciwe kuwa 17/05/2013.