

NGANGARE v. MUKANKURANGA

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0022/13/CS (Mutashya, P.J., Mukamulisa, na Gatete, J.) 25 Nyakanga 2014]

Amategeko agenga umuryango – Ababana batarashakanye mu buryo bukurikije amategeko – Ugutandukana – Igabana ry'umutungo – Ikoreshwa ry'itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina ku igabana ry'umutungo w'ababana batarashakanye mu buryo bukurikije amategeko – Ubwumvikane buke hagati y'abashakanye mu buryo budakurikije amategeko ntibusobonuye gutandukana mu gihe bakomeje kubana mu nzu imwe, gufatanya inshingano zo kurera abana no gucunga urugo rwabo – Abashakanye mu buryo budakurikije amategeko bakomeje kubana nyuma y'uko itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina risohokeye bagabana hakurikijwe iryo tegeko mu gihe batandukanye – Igabana ry'umutungo w'ababana batarashakanye mu buryo bukurikije amategeko rigamije kurengera uburenganzira ku mutungo wa buri wese muri bo kandi ubwo burenganzira bushingira ku kuba hari umutungo bafitanye cyangwa bafatanyije gushaka – Itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39 n'ya 41.

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Indishyi – Gushorwa mu manza – Kuba hari ibyo uregwa yatakaje mu manza agomba kubiharerwa indishyi zigenwe mu bushishozi bw'Urukiko.

Incamake y'ikibazo: Ngagare na Mukankuranga babanye badasezeranye imbere y'amategeko ariko bari barabanye bukurikije umuco w'i Bugande kuko ariho babaniye mbere y'uko bimukira mu Rwanda. Nyuma habayeho ubwumvikane buke hagati yabo bituma Mukankuranga atanga ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba ko bagabana imitungo bahahanye. Urukiko rwemeje ko bagabana imitungo batunze buri wese agatwara kimwe cya kabiri cyawo kandi akagumana imitungo yimukanwa atunze; rutegeka Ngangare kumuha igihembo cy'avoka n'ukurikiranarubanza.

Ngangare yajurirye Urukiko Rukuru maze rwemeza ko ubujurire bwe nta shingiro bufite; yongeye na none kujuririra Urukiko rw'Ikirenga avuga ko Urukiko rwashingiye ku itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina kandi ryaratangiye gukurikizwa atakibana na Mukankuranga, bityo imitungo yaguze nyuma y'umwaka wa 2000 itagombaga kugabanywa kuko bari batakibana. Yongeraho ko n'iyi iryo tegeko ryaba ariryo ryari gukurikizwa, ingingo yaryo ya 39 itashingirwaho kuko ireba igabana ry'umutungo ku babana batarashakanye mu buryo bukurikije amategeko mu gihe hari umwe muri bo ugiye gushyingirwa.

Mukankuranga we avugako batigeze bareka kubana kuko bakomeje kubana mu nzu imwe, bafatanya kurera abana no gucunga urugo rwabo bityo akavuga ko ari yo mpamvu ingingo ya 39 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryavuzwe haruguru ariryo rikwiye gukoreshwa.

Incamake y'icyemezo: 1. Ubwumvikane buke hagati y'ababana batarashakanye mu buryo bukurikije amategeko ntibusobonuye gutandukana mu gihe bakomeje kubana mu nzu imwe, gufatanya inshingano zo kurera abana no gucunga urugo rwabo.

2. Ababana batarashakanye mu buryo bukurikije amategeko bakomeje kubana nyuma y'uko itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina risohokeye bagabana imitungo bafatanyije gushaka hakurikijwe iryo tegeko mu gihe batandukanye.

3. Igabana ry'umutungo w'ababana batarashakanye mu buryo bukurikije amategeko, rigamije kurengera uburenganzira ku mutungo wa buri wese mu bari basanzwe babana nk'umugore n'umugabo kandi ubwo burenganzira bushingira ku kuba hari umutungo bafatanyije gushaka.

4. Kuba har'ibyo uregwa yatakaje mu manza agomba kubiharerwa indishyi zigenwe mu bushishozi bw'urukiko.

**Ubujurire nta shingiro bufite.
Amagarama y'urubanza aherereye k'urega.**

Amategeko yashingiweho:

Itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39 n'ya 41.

Imanza zifashishijwe:

Mutebi v. Mukagasaza, RCAA0143/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 15/03/2013.
Gatera v. Kabalisa, RS/Inconst/Pen.0003/10/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 07/01/2011.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ngangare John na Mukankuranga Grace babanye batarasezeranye imbere y'amategeko kuwa muri 1984 bakiba mu gihugu cya Uganda, bakaba barabyaranye abana bane. Nyuma habaye ubwumvikane buke hagati yabo bituma Mukankuranga Grace atanga ikirego mu Rukiko Rwisumbuye rwa Gasabo avuga ko nubwo batasezeranye, babanaga bukurikije umuco wa Uganda kuko Ngangare yamusabye akanamukwa, anasaba ko bagabana imitungo yose bahahanye.

[2] Mu guca urubanza, urukiko rwemeje ko bagabana imitungo igizwe n'ikibanza n°41 kirimo amazu atatu (inzu ifite ibyumba bitanu, inzu itarasakarwa n'inzu yuzuye isigaje amasuku) zihereye aho batuye, isambu iri mu mudugudu wa Karama, Akagari ka Musave, Umurenge wa Bumbogo, Akarere ka Gasabo n'inzu n'isambu basize Uganda, buri wese agatwara kimwe cya kabiri cy'imitungo, buri wese akagumana imitungo yimukanwa atunze, runatega Ngangare guha Mukankuranga 300,000 Frws y'ikurikiranarubanza n'igihembo cya Avoka.

[3] Ngangare John yajurirye Urukiko Rukuru rwemeza ko ubujurire bwe nta shingiro bufite, ruvuga ko imikirize y'urubanza rwajuririwe idahindutse.

[4] Ngangare John ntiyishimiye na none imikirize y'urubanza maze ajuririra Urukiko rw'Ikirenga agaragaza ibyo anenga mu rubanza rwaciwe, Mukankuranga nawe agenda abisubizaho.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 17/06/2014, Ngangare John aburanirwa na Me Ntigurirwa François na Me Umupfasoni Blandine, naho Mukankuranga Grace yunganiwe na Me Mukamana Elisabeth.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

a) Kumenya niba Ngangare na Mukankuranga bararetse kubana mbere y'uko Itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina rijyaho, ku buryo ritashingirwaho muri uru rubanza.

[6] Me Umupfasoni Blandine uburanira Ngangare John, avuga ko umucamanza yavugiye Mukankuranga Grace ibyo atavuze ubwo yemezaga ko kuwa mu mwaka wa 2000 bakomeje kubana nubwo bari bafite ubwumvikane buke, nyamara Mukankuranga ubwe yariyemereye ko kuwa muri uwo mwaka wa 2000 batongeye kubana nk'umugore n'umugabo.

[7] Akomeza avuga ko ingingo ya 41 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryavuzwe, iteganya ko rizatangira gukoreshwa kuva risohotse, ko rero ubwo ryasohotse muri 2008 Ngangare na Mukankuranga batakibana, ridakwiye gukoreshwa, kandi ko n'imitungo Ngangare yaguze nyuma ya 2000 itagomba kubaganywa hashingiwe kuri iryo tegeko kuko yayibonye batakibana.

[8] Avuga kandi ko amasezerano y'akazi Mukankuranga yakoranye na SWA Rwanda yo muri 2010 ashaka kugaragaza ko yakoraga, yayakoze batakibana, kuko yatangiye kugira amafaranga kuri konti mu mwaka wa 2000, ari nawo batandukanyemo.

[9] Mukankuranga avuga ko yabanye na Ngangare muri Uganda kuwa mu mwaka wa 1984 bombi barangije kwiga, muri 1994 barahunguka baza mu Rwanda, bafatanyaga gushaka imitungo bari kumwe ariko ko yasabye Ngangare ko basezerana undi akabyanga yemera gusa abana babyaranye.

[10] Anavuga ko batigeze batandukana kuko n'ubu babana mu nzu imwe, uretse gusa ko batakiryamana. Yongeyeho ko no ku munsu w'iburanisha ry'urubanza muri uru Rukiko bombi baje bavuye muri iyo nzu babanamo ndetse ko abaturanyi babo bazi ko babana bakaba banafitanye abana bane babyaranye, ko bakora umuganda hamwe bagasangira igikoni, umukozi, umuzamu n'inzu, ko Urukiko ruramutse rukeneye kureba ko ibyo avuga ari ukuri rwabaza abo baturanyi.

[11] Yakomeje avuga ko mu mwaka wa 2008 yishyuye umuriro w'amafaranga 1.000.000 Frw kandi bose bawukoresha, akibaza niba Ngangare abifata nko kumuguriza. Anavuga ko kuwa

mbere abana na Ngagare yakoraga n'ubu akaba agikora, ndetse ko ibyo babonye byose bafatanyije kubishaka kandi ko ibintu byose babikorera hamwe.

[12] Me Mukamana Elisabeth umwunganira avuga ko umucamanza atigeze avugira Mukankuranga ibyo atavuze kuko yavuze ko kuba baratangiye kutumvikana mu 2000 bidasobanura ko batakomeje kubana nk'umugabo n'umugore, ari yo mpamvu Itegeko n° 59/2008 ryo kuwa 10/09/2008 ribareba.

UKO URUKIKO RUBIBONA

[13] Itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina ryatangajwe mu Igazeti ya Leta n° 14 yo kuwa 06/07/2009, ritangira gukurikizwa kuva ku munsu ryatangarijweho nk'uko ingingo yaryo ya 41 ibivuga.

[14] Urukiko rusanga mu iburanisha Mukankuranga yarasobanuye ko yabanye na Ngangare nk'umugabo n'umugore nta kibazo bafitanye kugeza mu mwaka wa 2000 ari bwo hatangiye kuba ubwumvikane buke hagati yabo, ubwo bwumvikane buke bukaba bwarakomeje kugeza n'ubu, ariko ko n'ubwo batari babanye neza, bakomeje gutura mu nzu imwe nk'umugabo n'umugore, banafitanye abana babanyane kandi bakomeza gufatanya kubarera ndetse no gufatanya gucunga urugo rwabo. Ibyo Mukankuranga yavuze Ngangare akaba atarigeze abinyomoza.

[15] Mu rubanza n° RCAA0143/11/CS rwaciwe n'uru Rukiko kuwa 15/03/2013 haburana Mutebi Hamisi alias Fungamani na Mukagasaza Amina, aho Mutebi Hamisi yaburanaga avuga ko Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryamaze kuvugwa ryasohotse baratandukanye, uru Rukiko rwemeje ko nta shingiro bifite, kuko inyandiko ziri muri dosiye zigaragaza ko kugeza muri 2010, Mutebi na Mukagasaza bari bakibana n'ubwo babanaga nabi.

[16] Ku bijyanye n'uru rubanza, Urukiko rurasanga kuba hagati ya Ngangare na Mukankuranga harabayeho ubwumvikane buke kuva mu mwaka wa 2000 bidasobanura ko batakomeje kubana nk'umugore n'umugabo nk'uko byasobanuwe mu rubanza rumaze kuvugwa, kubera ko Ngangare atabashije kugaragaza ko yaretse kubana na Mukankuranga muri 2000 ku buryo Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryavuzwe ritamureba; ingingo y'ubujurire bwe ikaba rero nta shingiro ifite.

b) Kumenya niba Urukiko rwarakoresheje nabi ingingo ya 39 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina.

[17] Me Umupfasoni Blandine avuga ko n'iyi Urukiko rwaramuka rubonye ko kugeza ubu Mukankuranga na Ngangare bakibana nk'umugabo n'umugore, ingingo ya 39 y'itegeko ryavuzwe haruguru atari yo igomba gushingirwaho ngo bagabane umutungo, kubera ko iyi ngingo iteganya ko usabwa kubanza kugabana imitungo ari uba ugiye gushyingirwa, kugira ngo mugenzi we cyangwa bagenzi be babanaga mu buryo butemewe n'amategeko babanze bahabwe uruhare rwabo mbere yuko uwo wundi aya gushyingirwa.

[18] Akomeza avuga ko Mukankuranga Grace atigeze agaragariza urukiko ko Ngangare agiye gushaka undi mugore, ndetse ko iyo Ngangare aza kuba ari we ushaka gushyingirwa, niwe wari gutanga ikirego asaba ko babanza kugabana imitungo.

[19] Me Mukamana Elisabeth avuga ko ingingo ya 39 y'Itegeko yavuzwe yashyizweho hagamijwe guca akarengane kugira ngo umutungo abantu bashakanye batarasezeranye hatagira umwe uwiharira. Anavuga ko Ngangare na Mukankuranga bamaze imyaka mirongo itatu babanye, n'ubu bakaba bakibana n'ubwo hari inshingano zimwe batubahiriza nk'abashakanye, kandi ko nabyo byatewe n'ubwumvikane buke bwabaye hagati yabo, ariko ko bitavuze ko baretse kubana nk'umugore n'umugabo.

[20] Akomeza avuga ko atumva uburyo nyuma y'iyi myaka yose Ngangare amaranye na Mukankuranga yasaba icyemezo cy'uko ari ingaragu, ahubwo ko kuba yaragishatse bigaragaza ko yashakaga uburyo bwo kwiharira umutungo.

[21] Yasobanuye ko urubanza rwa Gatera John na Kabalisa Teddy rwaciwe n'uru Rukiko kuwa 07/01/2011 rwasubijye ibibazo byose ababuranira Ngangare bibaza ku bijyanye n'ingingo ya 39 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryavuzwe haruguru.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 39 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryavuzwe haruguru ivuga ko: "ababanaga nk'umugore n'umugabo batarashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikije ihame ry'ubushyingiranwe bw'umugabo umwe n'umugore umwe. Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa n'abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa".

[23] Mu rubanza RS/Inconst/Pen.0003/10/CS rwaciwe kuwa 07/01/2011 ku kirego cyatanzwe na Gatera Johnson na Kabalisa Teddy basaba ko ingingo ya 39 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryavuzwe inyuranyije n'Itegeko Nshinga, uru Rukiko rwasobanuye ko igihe ababanaga nk'umugabo n'umugore batarashyingiranywe bahagaritse kubana, kugira ngo bagabane umutungo bagomba kuba bari bawufitanye cyangwa barawushakanye; Urukiko rukaba rwaranasobanuye ko kugira uburenganzira ku mutungo bidashingiye gusa ku mpamvu y'uko abantu babanye nk'umugabo n'umugore batarashyingiranywe, ahubwo ko bigomba kuba bigaragara ko hari umutungo bafitanye cyangwa bafatanyije gushaka.

[24] Urukiko rusanga rero nk'uko uru Rukiko rwabisobanuye mu rubanza rumaze kuvugwa, ikigamijwe mu ngingo ya 39 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryavuzwe, yanashyingiweho n'Urukiko Rukuru, ari ukurengera uburenganzira ku mutungo bwa buri wese mu bari basanzwe babana nk'umugabo n'umugore ariko batarashyingiranywe, kubera uruhare yagize mu guteza imbere urugo yabanagamo na mugenzi we, ari yo mpamvu umutungo bahahanye cyangwa bari bafatanyije bagomba kubanza kuwugabana mu gihe umwe yifuza gushyingiranwa n'undi utari we, kuko bitabaye ibyo, umwe muri bo cyane cyane ugiye gushyingiranwa n'undi, yakungukira ku bintu yahahanye cyangwa yari asangiye n'uwo babanaga.

[25] Hakurikijwe ibisobanuro byatanzwe, Urukiko rurasanga rero nta kosa Urukiko Rukuru rwakoze rushingira ku ngingo ya 39 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 ryavuzwe maze rugashimangira ibyemejwe n'Urukiko Rwisumbuye rwa Gasabo ko Ngangare John na Mukankuranga Grace bagomba kugabana imitungo yabo nk'uko yavuzwe haruguru.

c) Kumenya niba Mukankuranga Grace akwiye indishyi asaba

[26] Me Mukamana Elisabeth uburanira Mukankuranga Grace yatanze ubujurire bwuririye ku bundi asaba ko amafaranga 500.000 uwo aburanira yagenewe mu rubanza rwajuririye y'ikurikiranarubanza n'igihembo cya avoka yiyongera akagera kuri 1.000.000 Frw yari yasabye ku rwego rubanza cyane cyane ko Ngangare akomeje kumurushya akomeza imanza.

[27] Me Ntigurirwa François wunganira Ngangare John avuga ko ari bo bareze basaba ko Urukiko rwakira ubujurire bwabo kandi rugakuraho urubanza rwajuririye, ko rero mu gihe urubanza rwaba ruvuyeho n'ubujurire bwuririye ku bundi bwatanzwe na Mukankuranga ntacyo bwaba bushingiyeho. Yongeraho ariko ko mu gihe Urukiko rwaba rudahaye agaciro ubujurire bwa Ngangare, rwagena indishyi mu bushishozi bwawo.

[28] Urukiko rurasanga mu rubanza rwajuririye, Mukankuranga Grace yari yagenewe 500.000 Frw y'ikurikiranarubanza n'igihembo cya avoka, ayo mafaranga akaba akwiye kwiyongera kubera ko biboneka ko Ngangare John akomeje imanza zatumye hari ibyo Mukankuranga yongera gutanga kuri uru rubanza, akaba azenewe 500.000 Frw kuri uru rwego azenwe mu bushishozi bw'Urukiko.

III. ICYEMEZO CY'URUKIKO RW'IKIRENGA

[29] Rwemeje ko ubujurire bwa Ngangare John nta shingiro bufite;

[30] Rwemeje ko imikirize y'urubanza RCA 0163/12/HC/KIG rwaciwe n'Urukiko Rukuru i Kigali kuwa 19/07/2013 idahindutse usibye ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya avoka ahawe Mukankuranga Grace kuri uru rwego;

[31] Rutegetse Ngangare John guha Mukankuranga Grace 500.000 Frw y'ikurikirana rubanza n'igihembo cya Avoka yiyongera kuri 500.000 Frw yagenewe mu rubanza rwajuririye;

[32] Rutegetse Ngangare John gutanga amagarama y'urubanza angana na 29.800 Frw.