KHALID v. AHMED N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RC 0002/09/CS (Kayitesi R., P.J., Mukamulisa na Mukandamage, J.) 19 Werurwe 2010]

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Inzira z'ubujurire mu Rukiko rw'Ikirenga – Iyakirwa ry'ikirego kigamije gutambamira urubanza – Inzira y'ubujurire idasanzwe yo gutambamira urubanza rw'abandi (tierce opposition) ishobora kuzitirwa n'itegeko – 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 – Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, ingingo ya 144 – Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 84 – Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 176.

Incamakey'ikibazo*:*Khalid Foz yatanze ikirego mu Rukiko rw'Ikirenga atambamira imikirize y'urubanza RCAA 0006/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/06/2008. Muri urwo rubanza Assini Omar na Ali Fikirini baburanaga na Ahmed Abdulatif na Succession Yussuf Bin Abdulaziz mu bujurire bw'urubanza RCA 0386/07/HC MUS rukomatanyijwemo izindi manza, rwaciwe n'Urukiko Rukuru,Urugereko rwa Musanze, rukaba rwari rwanagobotsemo Succession Mohamed Yussuf Bin Abdulaziz.

Assini Omar yatanze inzitizi yerekeye ububasha bwa *Succession* Yussuf Bin Abdulaziz naho *Succession* Yussuf Bin Abdoulaziz itanga inzitizi ijyanye n'ingwate yakwa abanyamahanga, icyakora Urukiko ruhitamo ko habanza gusuzumwa ireme ry'ikirego rwashyikirijwe, hashingiwe ku ngingo ya 84 y'Itegeko Ngenga n° 1/2004 ryo ku wa 29/1/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryavuguruwe kandi rikuzuzwa kugeza ubu, n'ingingo ya 144 y'Itegeko Nshinga ryo ku wa 04/06/2003 nk'uko ryavuguruwe kugeza ubu.

Uruhande rurega ruvuga ko baregeye Urukiko basanga rufite ububasha kuko Urukiko rw'Ikirenga ruburanisha imanza mu mizi (juge de fond), bivuze ko ikirego cyo gutambamira urubanza ari uburenganzira bw'umuntu buteganywa n'ingingo ya 18 y'Itegeko Nshinga kandi ko hari izindi manza Urukiko rw'Ikirenga rwaburanishije rushingiye kuri iyi ngingo, urwo babonye akaba ari urwo gusubirishamo urubanza (opposition) RSOCAA 0008/06/CS rwa EER na Musenyeri Sebununguri rwaciwe tariki ya 17/07/2009, yabisuzuma agasanga byumvikana ko gutambamira urubanza (tierce opposition) nabyo byakwakirwa. Yiregura ku byerekeye ingingo ya 144 y'Itegeko Nshinga, ivuga ko ibyemezo by'Urukiko rw'Ikirenga bitajuririrwa uretse ibyerekeye imbabazi n'isubirwamo ry'urubanza, yavuze ko gusubirishamo urubanza abifata kimwe no kurutambamira.

Uruhande rwunganira Assini Omarruvuga ko gutambamira urubanza bikorwa n'umuntu utarigeze ahamagarwa mu rubanza *(tierce opposition)* byumvikana ko ari *opposition* ikozwe n'abantu batandukanye. Yongeyeho ko mu rubanzaRSOCAA 0008/06/CS bisobanuye neza ko umuburanyi akoresha inzira zisanzwe n'izidasanzwe zo kujurira *(les voies de recours ordinaires et extraordinaires)*, akaba asanga rero niba Urukiko rw'Ikirenga rwarabyemeye, gutambamira urubanza *(tierce opposition)* bifite ireme kandi ari uburengira bwe mu gihe urubanza rwaciwe rumurenganya kuko kubwe nta kuntu Urukiko rwakwemerera umuburanyi wari uhari kongera kuburana rukabyangira utaramenye urubanza.

Uruhande rwunganira Ahmed Abdullatif ruvuga ko izo ngingo z'amategeko zisobanutse neza kuko ku ngingo ya 84 y'Itegeko Ngenga n° 1/2004 ryo ku wa 29/1/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, umushingamategeko atari ananiwe kongeramo gusubirishamo urubanza cyangwa kurutambamira, kandi ko hari urubanza RCA 0002/05/CSKagoyire Christine yaburanye na Amuri Sultan rwerekeranye no gutambamira urubanzarwashingirwaho n'Urukiko rw'Ikirenga kuko rwasanze iyo nzira y'ubujurire idateganyijwe n'amategeko mu Rukiko rw'Ikirenga bityoakaba asanga urubanza abamubanjirije batanze rurebana gusa no gusubirishamo urubanza *(opposition).*

Uwunganira Succession Yussuf Bin Abdulaziznawe yashimangiye ko gutambamira urubanza mu Rukiko rw'Ikirenga bidashoboka ashingiye ku ngingo ya 176 y'Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko urubanza rushobora gutambamirwa, uretse iyo amategeko abiteganya ukundi.

Ali Fikirini we avuga ko Khalid Foz yakwemererwa gutambamira urubanza kuko yaruvuzwemo cyane ariko ntaruhamagarwemo ariyo mpamvu afite inyungu kuko atarumenyeshejwe.

Incamake y'icyemezo: 1. Inzira y'ubujurire idasanzwe yo gutambamira urubanza rw'abandi (tierce opposition) ishobora kuzitirwa n'itegeko.

2. 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.

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

Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 176.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku kirego Khalid Foz yatanze muri uru rukiko atambamira imikirize y'urubanza RCAA 0006/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/06/2008. Muri urwo rubanza Assini Omar na Ali Fikirini baburanaga na Ahmed Abdulatif na Succession Yussuf Bin Abdulaziz bajuririra urubanza RCA 0386/07/HC MUS rukomatanyijwemo izindi manza, rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze. Hagobotsemo Succession Mohamed Yussuf Bin Abdulaziz.

[2] Muri urwo rubanza RCAA 0006/08/CS rutambamirwa, Urukiko rw'Ikirenga rwemeje ko ubujurire bwa Assini Omar nta shingiro bufite, ko ubwa *Succession* Yussuf Bin Abdulaziz bufite ishingiro, ko igoboka ku bushake rya *Succession* Mohamed Yussuf Bin Abdulaziz ritaburanishijwe kubera ko Me Musonera watanze ikirego yivanye mu rubanza ntihagira umusimbura.

[3] Urukiko rw'Ikirenga rwategetse Assini Omar guha *Succession* Yussuf Bin Abdulaziz 3.780.000Frw y'ubukode yiyongera kuri 28.620.000Frw yaciwe mu rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, yose hamwe akaba 32.400.000Frw, no gufatanya na Ali Fikirini kwishyura 300.000Frw y'ikurikirana rubanza yiyongera kuri 1.431.000 Frw baciwe n'Urukiko Rukuru, buri wese akanishyura 4% y'umusogongero wa Leta ku mafaranga atsindiwe, bagafatanya na none kwishyura 36.650Frw y'amagarama y'urubanza, batayatanga mu gihe cy'iminsi 8 akavanwa mu byabo ku ngufu za Leta.

II. URUBANZA MU RUKIKO RW'IKIRENGA

[4] Hakurikijwe itegeko n° 0038/09/RC rya Perezida w'Urukiko rw'Ikirenga ryo ku wa 20/10/2009, urubanza rwahamagawe mu iburanisha ku wa 10/11/2009 ariko ntirwaburanishwa, rwimurirwa tariki ya 19/01/2010 mu nyungu z'ubutabera kuko ababuranyi bamwe bifuzaga kuburana, abandi bifuza ko iburanisha ryimurwa kuko hari amakuru ko Me Musonera Alexis uburanira Khalid Foz yagize impanuka.

[5] Tariki ya 19/01/2010 iburanisha ryarakomeje mu ruhame, hari Me Musonera Alexis uburanira Khalid Foz, Assini Omar yunganirwa na Me Buhuru Pierre Célestin, Me Hakizimana Théogène uburanira *Succession* Yussuf Bin Abdoulaziz, Me Habimana Adolphe uburanira Ahmed Abdoulatif na Ali Fikirini yiburanira.

[6] Mbere y'uko hasuzumwa inzitizi yatanzwe mu myanzuro na Assini Omar yerekeye ububasha bwa *Succession* Yussuf Bin Abdulaziz n'indi yatanzwe na Me Hakizimana Théogène ijyanye n'ingwate yakwa abanyamahanga, urukiko rwifuje ko habanza gusuzumwa ireme ry'ikirego rwashyikirijwe, hashingiwe ku ngingo ya 84 y'Itegeko Ngenga n° 1/2004 ryo ku wa 29/1/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryavuguruwe kandi rikuzuzwa kugeza ubu, n'ingingo ya 144 y'Itegeko Nshinga ryo ku wa 04/06/2003 nk'uko ryavuguruwe kugeza ubu.

[7] Me Musonera Alexis yahawe ijambo avuga ko baregeye Urukiko basanga rufite ububasha hashingiwe ku ngingo zimaze kuvugwa kuko Urukiko rw'Ikirenga ruburanisha imanza mu mizi *(juge de fond),* bivuze ko ikirego cyo gutambamira urubanza ari uburenganzira bw'umuntu buteganywa n'ingingo ya 18 y'Itegeko Nshinga. Yakomeje avuga ko hari izindi manza Urukiko rw'Ikirenga rwaburanishije rushingiye kuri iyi ngingo, urwo babonye akaba ari urwo gusubirishamo urubanza (opposition) rufite n° RSOCAA 0008/06/CS rwa EER na Musenyeri Sebununguri rwaciwe tariki ya 17/07/2009, yabisuzuma agasanga byumvikana ko gutambamira urubanza (tierce opposition) nabyo byakwakirwa.

[8] Ku byerekeye ingingo ya 144 y'Itegeko Nshinga, ivuga ko ibyemezo by'Urukiko rw'Ikirenga bitajuririrwa uretse ibyerekeye imbabazi n'isubirwamo ry'urubanza, yavuze ko gusubirishamo urubanza abifata kimwe no kurutambamira.

[9] Me Buhuru yahawe ijambo avuga ko ahereye ku rubanza rwo gusubirishamo urubanza *(opposition)* rumaze kuvugwa, gutambamira urubanza bikorwa n'umuntu utarigeze

ahamagarwa mu rubanza *(tierce opposition)* byumvikana ko ari *opposition* ikozwe n'abantu batandukanye. Yongeyeho ko muri urwo rubanza bisobanuye neza aho ruvuga ko umuburanyi akoresha inzira zisanzwe n'izidasanzwe zo kujurira *(les voies de recours ordinaires et extraordinaires)*, akaba asanga rero niba Urukiko rw'Ikirenga rwarabyemeye muri *jurisprudence* yarwo, gutambamira urubanza *(tierce opposition)* bifite ireme.

[10] Ku byerekeye ingingo ya 84 y'Itegeko Ngenga n° 1/2004 ryo ku wa 29/1/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, yavuze ko mu bika bya 22-24 by'urubanza RSOCAA 0008/06/CS Urukiko rw'Ikirenga rwayivuzeho, yanzura avuga ko niba urubanza rwaciwe kuri uru rwego rwa nyuma rurenganya Khalid Foz, mu gihe yagaragaza inyungu afite, yakwemererwa kurutambamira kuko ari uburenganzira bwe.

[11] Assini Omar yongeyeho ko iyo *jurisprudence* y'Urukiko rw'Ikirenga yasobanuye neza izo ngingo z'amategeko cyane mu gika cya 25 cy'urubanza, akaba yumva nta kuntu Urukiko rwakwemerera umuburanyi wari uhari kongera kuburana rukangira utaramenye urubanza.

[12] Me Habimana Adolphe nawe yahawe ijambo, avuga ko izo ngingo z'amategeko zisobanutse neza. Ku ngingo ya 84 y'Itegeko Ngenga n° 1/2004 ryo ku wa 29/1/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, yasobanuye ko umushingamategeko atari ananiwe kongeramo gusubirishamo urubanza cyangwa kurutambamira, yongeraho ko hari *jurisprudence* yashingirwaho y'Urukiko rw'Ikirenga mu rubanza RCA 0002/05/CS Kagoyire Christine yaburanye na Amuri Sultan yerekeranye no gutambamira urubanza, aho rwasanze iyo nzira y'ubujurire idateganyijwe n'amategeko mu Rukiko rw'Ikirenga, akaba rero asanga *jurisprudence* abamubanjirije batanze irebana gusa no gusubirishamo urubanza (opposition).

[13] Me Hakizimana Théogène nawe yashimangiye ko iyo ngingo isobanutse neza, icyemewe ku rubanza rwaciwe n'Urukiko rw'Ikirenga akaba ari ukurusubirishamo ingingo nshya. Yakomeje avuga ko iyo ngingo inashingiye ku ya 176 CPCCSA ivuga ko urubanza rushobora gutambamirwa, uretse iyo amategeko abiteganya ukundi, akaba asanga rero gutambamira urubanza muri uru rukiko bidashoboka.

[14] Ali Fikirini nawe yahawe ijambo avuga ko Khalid Foz yakwemererwa gutambamira urubanza RCAA 0006/08/CS kuko yaruvuzwemo cyane ariko akaba atarahamagajwe, ariyo mpamvu afite inyungu kuko atarumenyeshejwe.

[15] Iburanisha ry'urubanza ku bijyanye no kwakira ikirego cyo gutambamira urubanza muri uru rukiko ryarasojwe, ababuranyi bamenyeshwa ko ruzasomwa tariki ya 19/02/2010, uwo munsi ariko isomwa ryarwo ryimurirwa ku wa 19/03/2010 kuko rwari rutararangira gusuzumwa, Urukiko ruriherera ruruca mu buryo bukurikira:

III. IBYASUZUMWE N'URUKIKO N'UKO RUBIBONA

[16] Ikigomba gusuzumwa muri uru rubanza ni ukureba niba ikirego cyatanzwe na Khalid Foz gisaba gutambamira urubanza RCAA 0006/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/06/2008 gikwiye kwakirwa kigasuzumwa.

[17] Ingingo ya 144 y'Itegeko Nshinga ryo ku wa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, ivuga ko Urukiko rw'Ikirenga ari 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.

[18] Na none ingingo ya 84 y'Itegeko Ngenga n° 1/2004 ryo ku wa 29/1/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ivuga ko bitabangamiye uburyo buteganyijwe n'amategeko bwo gusubirishamo urubanza rwaciwe burundu, urubanza rwaciwe n'Urukiko rw'Ikirenga rudashobora 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.

[19] Ingingo ya 176 y'itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "urubanza rwose rushobora gutambamirwa keretse iyo amategeko abiteganya ukundi". Ibyo bikaba bisobanuye ko iyo nzira y'ubujurire idasanzwe yo gutambamira urubanza rw'abandi *(tierce opposition)* ishobora kuzitirwa n'itegeko nk'uko ingingo ya 84 y'Itegeko Ngenga n° 1/2004 imaze kuvugwa yabikoze.

[20] Hashingiwe ku biteganywa n'izo ngingo zose, Urukiko rurasanga umushingamategeko yarerekanye mu buryo budashidikanywaho kandi bugaragara ko mu nzira z'ijurira zateganyijwe n'amategeko, imwe gusa yo gusubirishamo urubanza ingingo nshya *(recours en révision)* ariyo ishobora gukoreshwa ku manza zaciwe burundu n'Urukiko rw'Ikirenga, izindi zikaba zidashoboka.

[21] Ku byerekeye imanza ebyiri, RSOCAA 0008/09/CS, EER yaburanye na Mgr Sebununguri na RC 0002/05/CS Kagoyire Christine yaburanye na Abdallah Sultan na Succession Hamud zaciwe n'Urukiko rw'Ikirenga ababuranyi bavuga ko ari "jurisprudence" bashingiyeho, bamwe bemeza ko ikirego cyo gutambamira urubanza rw'abandi *(tierce opposition)* cyakwakirwa muri uru rukiko, abandi bahakana ko rutayakira, uru Rukiko rurasanga "jurisprudence" iba igizwe na "une série de décisions concordantes à un problème determine", bityo izo manza ebyiri zikaba zitafatwaho ko zigize "*jurisprudence"* ngo zibe zashingirwaho.

[22] Na none kuri urwo rubanza RSOCAA 0008/06/CS rwa EER na Musenyeri Sebununguri rwaciwe tariki ya 17/07/2009 Urukiko rurasanga rwarafashwemo icyemezo cyerekeranye no gusubirishamo urubanza *(opposition)* rukaba rero rutashingirwaho mu gusuzuma iki kirego cyo gutambamira urubanza rw'abandi *(tierce opposition)*, cyane ko nk'uko bimaze kuvugwa, iyi nzira y'ijurira itemewe ku manza zaciwe burundu n'uru rukiko.

[23] Hakurikijwe ibimaze gusobanurwa haruguru, Urukiko rurasanga ikirego RC 0002/09/CS cyatanzwe na Khalid Foz kigamije gutambamira urubanza RCAA 0006/08/CS kitagomba kwakirwa ngo gisizumwe.

[24] Ku birebana n'inzitizi yatanzwe na Assini Omar yerekeye iburabubasha rya Succession Yussuf Bin Abdulaziz n'indi yatanzwe na Me Hakizimana ijyanye n'ingwate yakwa abanyamahanga, urukiko rurasanga isuzuma ry'izo nzitizi ritakiri ngombwa kuko ikirego cyatanzwe na Khalid Foz kitakiriwe.

IV. ICYEMEZO CY'URUKIKO

[25] Rwemeje kutakira ikirego cyatanzwe na Khalid Foz cyo gutambamira urubanza RCAA 0006/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/06/2008 kuko cyatanzwe mu buryo budakurikije amategeko.

[26] Rutegetse Khalid Foz kwishyura amafaranga 12.500Frw y'amagarama y'urubanza, akayatanga mu gihe cy'iminsi 8, atayatanga ayo mafaranga agakurwa mu bye ku ngufu za Leta.