# NYIRAHABYARIMANA N'UNDI v. NTEZIRYAYO

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0086/11/CS (Mukanyundo, P.J., Rugabirwa na Gatete G., J.) 30 Mutarama 2015]

*Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ubujurire mu Rukiko rw'Ikirenga – Icyemezo cy'ibanzirizasuzuma – Itariki-fatizo mu kubara ibihe by'ubujurire ku muburanyi wari mu iburanisha rya nyuma akamenyeshwa umunsi w'isomwa ry'urubanza ariko uwo munsi wagera isomwa rikimurirwa ku wundi munsi – Imenyeshwa ry'urubanza – Iyo umuburanyi yitabye mu iburanisha rya nyuma akamenyeshwa umunsi w'isomwa ry'urubanza, ibihe byo kujurira bitangira kubarwa guhera ku munsi isomwa ryabereyeho kabone n'iyo yaba atari ahari cyangwa adahagarariwe – Iyo umuburanyi atitabiriye umuhango w'isomwa ry'urubanza, ntibibuza ko urwo rubanza rukomeza gufatwa nk'urwaburanishijwe ababuranyi bo ku mpande zombi bahari – Nta na hamwe hateganyijwe ko umuburanyi wari mu iburanisha rya nyuma kandi watangarijwe itariki urubanza ruzasomwaho agomba kumenyeshwa imikirize y'urubanza kabone n'ubwo isomwa ryaba ryimuriwe ku wundi munsi – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 163(1) – Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryerekeye imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 47(1).*

**Incamake y'ikibazo:** Nyirahabyarimana n'umukobwa we Murekatete batanze ikirego mu Rukiko Rwisumbuye rwa Muhanga batambamira imikirize y'urubanza RC 5012/17/2003 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gitarama rukemeza ko Nteziryayo ari mwene Uwamungu Azarias, rukanategeka ko umutungo wose wa Uwamungu ugabanywamo kabiri, ½ kikaba icya Nyirahabyarimana ikindi kikaba icy'abazungura ba Uwamungu.

Nyirahabyarimana na Murekatete ntibishimiye imikirize y'urubanza barujuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, ariko rwemeza ko ubujurire bwabo nta shingiro bufite, bituma bongera kujuririra Urukiko rw'Ikirenga. Umucamanza washinzwe ibanzirizasuzuma yemeje ko ikirego cyabo kitakiriwe kubera ko cyatanzwe gikererewe.

Batakambiye President w'Urukiko rw'Ikirenga bavuga ko ubujurire bwabo bwagombaga kwakirwa kuko bajuriye mu gihe giteganywa n'amategeko kubera itariki yagombaga gushingirwaho habarwa ibihe by'ubujurire ari iya 27/4/2010, ni ukuvuga igihe bamenyesherejweho imikirize y'urubanza n'Umunyamabanga Nshingwabikorwa w'Akagari ka Nyakabanda ya II, aho kuba itariki ya 18/03/2010 nk'uko byemejwe n'Umucamanza w'ibanzirizasuzuma kuko urubanza bajuririye rwaburanishijwe tariki ya 18/1/2010, maze Umucamanza avuga ko ruzasomwa tariki ya 3/3/2010 ariko uwo munsi ntirwasomwa, ahubwo isomwa ryimurirwa tariki ya 18/3/2010, iyi tariki ikaba itarigeze imenyeshwa ababuranyi.

**Incamake y'icyemezo:** 1. Iyo umuburanyi yitabye mu iburanisha rya nyuma akamenyeshwa umunsi w'isomwa ry'urubanza, ibihe byo kujurira bitangira kubarwa guhera ku munsi isomwa ryabayeho kabone n'iyo yaba atari ahari cyangwa adahagarariwe, icyangombwa ni uko aba yaramenyeshejwe umunsi w'isomwa ry'urubanza.

2. Iyo umuburanyi atitabiriye umuhango w'isomwa ry'urubanza, ntibibuza ko urwo rubanza rukomeza gufatwa ko rwaburanishijwe ababuranyi bo ku mpande zombi bahari kandi niwe wirengera ingaruka zabyo.

3. Nta na hamwe hateganyijwe ko umuburanyi wari mu iburanisha rya nyuma kandi watangarijwe itariki urubanza ruzasomwaho agomba kumenyeshwa imikirize y'urubanza kabone n'ubwo isomwa

ryaba ryimuriwe ku wundi munsi, kuko iyo umuburanyi yitabiriye umuhango w'isomwa ry'urubanza rwe amenya umunsi urubanza rwimuriweho, iyo rero ataje aba ari ikosa rye agomba kwirengera.

**Ubujurire ntibwakiriwe.**
**Amagarama aherereye ku barega.**

**Amategeko yashingiweho:**

Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 163(1).

Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryerekeye imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 47(1).

**Imanza zifishishijwe:**

MAERSK RWANDA Ltd v. SONARWA SA, RCOMA 0134/11/CS, rwaciwe n'urukiko rw'Ikirenga, kuwa 3/5/2013

Ubushinjacyaha v. Ntawiringiribyisi, RPA 0258/08/CS rwaciwe n'urukiko rw'Ikirenga kuwa 30/11/2009,

Association Umwungeri v. Mushayija, RADA 00034/09/CS rwaciwe n'urukiko rw'Ikirenga kuwa 12/02/2010.

# Urubanza

# I. IMITERERE Y'URUBANZA

[1] Nyirahabyarimana Marcelline n'umukobwa we Murekatete Chantal bareze Nteziryayo Dieudonné mu Rukiko Rwisumbuye rwa Muhanga, batambamira imikirize y'urubanza RC 5012/17/2003 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gitarama rwemeje ko Nteziryayo Dieudonné ari mwene Uwamungu Azarias, rukanategeka ko umutungo wose wa Uwamungu ugabanywamo kabiri, ½ kikaba icya Nyirahabyarimana Marcelline ikindi kikaba icy'abazungura Uwamungu yasize.

[2] Nyirahabyarimana Marcelline na Murekatete Chantal ntibishimiye imikirize y'uru rubanza barujuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, rwaciye urubanza RCA 0110/09/HC/NYA kuwa 18/3/2010 rwemeza ko ubujurire bwabo nta shingiro bufite.

[3] Na none Nyirahabyarimana Marcelline na Murekatete Chantal ntibishimiye imikirize y'urubanza barujuririra mu Rukiko rw'Ikirenga, ikirego cyabo gihabwa nº RCAA 0089/10/CS, Umucamanza washinzwe ibanzirizasuzuma mu cyemezo nº RCIV 0045/Préx-ex/11/CS yafashe kuwa 10/06/2011, yemeza ko ikirego cyabo kitakiriwe kubera ko cyatanzwe gikererewe.

[4] Mu gusobanura icyemezo cye, Umucamanza yavuze ko ubujurire bwa Nyirahabyarimana na Murekatete butubahirije igihe cy'ukwezi giteganywa n'ingingo ya 47 y'Itegeko Ngenga nº 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, kuko urubanza bajuririye rwaciwe kuwa 18/03/2010, bo barujuririra kuwa 25/5/2010.

[5] Nyirahabyarimana Narcelline na Murekatete Chantal bamenyeshejwe icyo cyemezo tariki ya 21/07/2011, bakijuririra tariki ya 3/08/2011, ni ukuvuga mu gihe cy'iminsi 15 cyateganywaga n'ingingo ya 55 y'Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004; bityo ubujurire bwabo bukaba bukwiye kwakirwa bugasuzumwa kuko bwakozwe mu bihe bikurikije amategeko.

[6] Urubanza rwaburanishijwe mu ruhame kuwa 6/01/2015, Nyirahabyarimana Marcelline na Murekatete Chantal baburanirwa na Me Ingabire Gaudence naho Nteziryayo Dieudonné aburanirwa na Me Nizeyimana Boniface.

## II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

**Kumenya niba ubujurire bwa Nyirahabyarimana Marcelline na Murekatete bwaratanzwe bukererewe.**

[7] Me Ingabire Gaudence uburanira Nyirahabyarimana Marcelline na Murekatete Chantal yavuze ko ubujurire bwabo aburanira bwagombaga kwakirwa kuko bajuriye mu gihe giteganywa n'amategeko kuko itariki yagombaga gushingirwaho habarwa ibihe by'ubujurire ari iya 27/4/2010, ni ukuvuga igihe bamenyesherejweho imikirize y'urubanza n'Umunyamabanga Nshingwabikorwa w'Akagari ka Nyakabanda ya II, aho kuba itariki ya 18/03/2010 nk'uko byemejwe n'Umucamanza w'ibanzirizasuzuma kuko urubanza bajuririye rwaburanishijwe tariki ya 18/1/2010, maze Umucamanza avuga ko ruzasomwa tariki ya 3/3/2010 ariko uwo munsi ntirwasomwa, ahubwo isomwa ryimurirwa tariki ya 18/3/2010, iyi tariki ikaba itarigeze imenyeshwa ababuranyi.

[8] Yabajijwe impamvu abo aburanira bataje gusomerwa kandi bari bamenyeshejwe itariki urubanza rwabo ruzasomerwaho ndetse na nyuma y'aho ntibakurikirane uko rwasomwe, asubiza ko byatewe n'ikibazo cyo kubura itike ndetse ko bagize n'ikibazo cyo kutamenya amategeko.

[9] Me Nizeyimana Boniface uburanira Nteziryayo Dieudonné yavuze ko ubujurire bwa Nyirahabyarimana Marcelline na Murekatete Chantal butagomba kwakirwa kuko bajuriye bakererewe bitewe nuko urubanza bajuririye rwasomwe kuwa 18/3/2010 barujurira kuwa 25/5/2010 ni ukuvuga mu gihe kirenze ukwezi cyateganywaga n'ingingo ya 47 y'Itegeko nº 01/2004 ryo kuwa 29/01/2014 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga.

[10] Yasobanuye ko Nyirahabyarimana Marcelline na Murekatete Chantal ntaho bahera bavuga ko bagombaga kumenyeshwa umunsi w'isomwa ry'urubanza kuko bari bitabiriye iburanisha rya nyuma ry'urubanza bakamenyeshwa ko ruzasomwa kuwa 3/3/2010 ndetse bashyira umukono ku nyandi-komvugo y'iburanisha, byumvikana ko bagombaga kuza gusomerwa kuri uwo munsi, kuba rero isomwa ry'urubanza ryari riteganyijwe kuwa 3/3/2010 ritarabaye, ahubwo rikimurirwa kuwa 18/3/2010, nta rindi menyesha ryagombaga gukorwa kuko iyo baza kwitaba uwo munsi bari kugenda basinyiye itariki isomwa ryimuriweho yo kuya 18/03/2010.

## UKO URUKIKO RUBIBONA

[11] Ibibazo bigomba gusuzumwa muri uru rubanza ni icyo kumenya igihe cy'ifatizo giherwaho mu kubara ibihe by'ijurira ku muburanyi wari mu iburanisha rya nyuma akamenyeshwa umunsi w'isomwa ry'urubanza, uwo munsi wagera ntirusomwe ariko Urukiko rukabikorera inyandikomvugo yerekana impamvu kandi rugatangaza indi tariki isomwa rishyizweho. Hari kandi ikindi kibazo kijyanye no kumenya niba umuburanyi witabiriye iburanisha rya nyuma akamenyeshwa itariki urubanza ruzasomwaho agomba kumenyeshwa imikirize y'urubanza.

[12] Ingingo ya 163, igika cya mbere y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kimwe n'iya 47, igika cya mbere, y'Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryerekeye imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga ziteganya ko «igihe ntarengwa cyo kujurira ari ukwezi kumwe, ko icyo gihe gitangira kubarwa, ku manza zaciwe ababuranyi bombi

bahari cyangwa ku manza ababuranyi bamenyeshejwe umunsi w'isomwa ntibitabe, kuva ku munsi zasomeweho".

[13] Ingingo z'amategeko zimaze kuvugwa, zigaragaza ko iyo umuburanyi yitabye mu iburanisha rya nyuma akamenyeshwa umunsi w'isomwa ry'urubanza, ibihe byo kujurira bitangira kubarwa guhera ku munsi isomwa ryabayeho kabone n'iyo yaba atari ahari cyangwa adahagarariwe, icyangombwa ni uko aba yaramenyeshejwe umunsi w'isomwa ry'urubanza.

[14] Ku kibazo cyo kumenya itariki-fatizo mu kubara ibihe by'ubujurire ku muburanyi wari mu iburanisha rya nyuma akamenyeshwa umunsi w'isomwa ry'urubanza, uwo munsi wagera ntirusomwe ariko Urukiko rukabikorera inyandikomvugo rusobanura impamvu kandi rugatangaza indi tariki isomwa ryimuriweho; igisubizo kuri iki kibazo gitangwa n'ibivugwa mu ngingo ya 163 n'iya 47 zimaze kuvugwa haruguru kuko byumvikana ko iyo umuburanyi yitabiriye isomwa ry'urubanza amenya neza niba rusomwe cyangwa niba isomwa ryimuwe; bityo akanamenya itariki nshya isomwa ryimuriweho. Iyo umuburanyi atitabiriye umuhango w'isomwa ry'urubanza, ntibibuza ko urwo rubanza rukomeza gufatwa ko rwaburanishijwe ababuranyi bo ku mpande zombi bahari kandi niwe wirengera ingaruka zabyo.

[15] Ku kibazo cyo kumenya niba umuburanyi witabiriye iburanisha rya nyuma akamenyeshwa umunsi w'isomwa agomba kumenyeshwa imikirize y'urubanza, Urukiko rusanga ingingo Nyirahabyarimana Marcelline na Murekatete Chantal baburanisha ko ibihe by'ubujurire kuri bo bigomba kubarwa haherewe ku munsi bamenyesherejweho imikirize y'urubanza nta shingiro ifite kuko nta na hamwe hateganyijwe ko umuburanyi wari mu iburanisha rya nyuma kandi watangarijwe itariki urubanza ruzasomwaho agomba kumenyeshwa imikirize y'urubanza kabone n'ubwo isomwa ryaba ryimuriwe ku wundi munsi, kuko iyo umuburanyi yitabiriye umuhango w'isomwa ry'urubanza rwe amenya umunsi urubanza rwimuriweho, kuba rero Nyirahabyarimana Marcelline na Murekatete Chantal bataraje gusomerwa kuwa 18/03/2010 akaba ari ikosa ryabo bagomba kwirengera.

[16] Byongeye kandi kuba Nyirahabyarimana Marcelline na Murekatete Chantal baramenyeshejwe itariki urubanza ruzasomwaho ariko ntibitabe cyangwa ngo bohereze ubahagararira muri uwo muhango, batashingira kuri uko kubura kwabo maze ngo bavuge ko bagombaga kumenyeshwa imikirize y'urubanza barufata nk'aho rwaburanishijwe badahari, cyane ko iryo menyesharubanza ritari ngombwa, bityo rikaba nta n'ingaruka rigomba kugira mu kubara ibihe by'ubujurire nk'uko babiburanisha. Uyu kandi niwo murongo wafashwe n'uru Rukiko mu manza zinyuranye[1], aho rwagiye rwemeza ko itariki fatizo y'igihe cy'ubujurire ku muburanyi wamenyeshejwe umunsi w'isomwa ry'urubanza mu iburanisha rya nyuma itaba iy'igihe uwo muburanyi utaritabiriye isomwa ry'urubanza yamenyesherejweho imikirize yarwo kandi bitari ngombwa ko ahubwo ku rubanza ruciwe nyuma y'iyimurwa ry'isomwa ryabereye mu ruhame, umunsi fatizo w'ibara ry'ibihe by'ubujurire ari uwo rwasomeweho bitabaye ngombwa ko icyemezo cy'Urukiko kimenyeshwa ababuranyi batitabiriye isomwa ry'urubanza nta mpamvu.

[17] Hashingiwe ku byasobanuwe, uru Rukiko rurasanga icyemezo cy'umucamanza w'ibanzirizasuzuma cyajuririwe kitagomba guhinduka kuko cyafashwe mu buryo bwubahirije amategeko, bityo ubujurire bwa Nyirahabyarimana Marcelline na Murekatete Marie Chantal bukaba nta shingiro bufite.

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[1] Nko mu rubanza nº RCOMA 0134/11/CS, MAERSK RWANDA Ltd yaburanye na SONARWA SA rwaciwe kuwa 3/5/2013, mu rubanza nº RPA 0258/08/CS, Ntawiringiribyisi Théoneste yaburanye n'Ubushinjacyaha rwaciwe kuwa 30/11/2009, mu rubanza nº RADA 00034/09/CS, Association Umwungeri yaburanye na Mushayija François rwaciwe kuwa 12/02/2010.

## III. ICYEMEZO CY'URUKIKO

[18] Rwemeje ko ubujurire bwa Nyirahabyarimana Marcelline na Murekatete Chantal ku cyemezo cy'ibanzirizasuzuma nta shingiro bufite.

[19] Rubategetse gutanga amagarama y'urubanza angana na 100.000Frw, buri wese agatanga ½ cyayo ni ukuvuga 50.000Frw.