MUKAGATARE v. SUCCESSION BWANAKEYE

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/CIV 0007/14/CS (Mukanyundo, P.J., Rugabirwa na Hitiyaremye, J.) 10 Ukwakira 2014]

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'urukiko rw'ikirenga – Gusubirishamo urubanza ku mpamvu z'akarengane – Inzitizi yo kutakira ikirego – Raporo y'ubugenzuzi bw'inkiko – Kuba Raporo y' ubugenzuzi bw'inkiko itari muri dosiye ntibyaba impamvu yo kutakira ikirego kuko yifashishwa gusa kugira ngo urubanza rushyirwe kuri gahunda y'iburanisha – Itegeko Ngenga n° 03/2012/OL ryokuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo 81 (1).

Incamake y'ikibazo: Mu 1995, Mukagatare yubatse mu kibanza avuga ko yari yahawe na Komini Ngoma ahungutse. Mu mwaka wa 2000, Bwanakeye yatangiye kurega Mukagatare mu buyobozi ko yamwubakiye mu busitani, maze mu mwaka wa 2006 amurega mu rukiko Rwisumbuye rwa Huye asaba guhagarikisha ubwubatsi Mukagatare yakoreraga mu murima we.urwo Rukiko rwemeje ko Mukagatare asenya Bingalo n'amazu yubatse mu murima wa Bwanakeye.

Mukagatare ntiyishimiye imikirize y'urubanza maze arujuririra mu Rukiko Rukuru, Urugereko rwa Nyanza;rwemeza ko imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Huye idahindutse mu ngingo zarwo zose.

Mukagatare ntiyishimiye na none iyo mikirize y'urubanza arujurira mu Rukiko rw'Ikirenga, ariko nyuma y'inzitizi y'iburabubasha yari yabyukijwe n'abahagarariye Bwanakeye, Urukiko rw'Ikirenga rwemeje ko ubujurire bwe butari mu bubasha bw'Urukiko rw'Ikirenga.

Mukagatare amaze kubona icyo cyemezo yahise agana urwego rw'umuvunyi asaba ko urubanza RCA 1633/06/HC/NYA rwasubirwamo ku mpamvu z'akarengane, maze Urwego rw'Umuvunyi rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza rwe rwasubirwamo ku mpamvu z'akarengane rwagejejweho na Mukagatare.

Succession Bwanakeye yatanze inzitizi yo kutakira ikirego cya Mukagatare mu rwego rw'akarengane avuga ko nta raporo y'ubugenzuzi bw'inkiko yabonye cyangwa se ngo igaragare muri dosiye.

Mukagatare yiregura avuga ko iyi nzitizi itahabwa agaciro kubera ko ku birebana na raporo y'ubugenzuzi atari we wagombaga kuyitanga, ahubwo iyo ngingo irebana n'ibimenyetso byirengagijwe igomba kuzasuzumwa mu mizi y'urubanza.

Incamake y'icyemezo: 1. Kuba Raporo y'ubugenzuzi bw'inkiko itari muri dosiye ntaho bibangamira ababuranyi kuko ubundi yifashishwa kugira ngo urubanza rushyirwe kuri gahunda ntiyifashishwa mu gusuzuma akarengane.

Inzitizi nta shingiro ifite.
Ikirego kirakiwe.
Amagarama y'urubanza arasubitswe.

Amategeko yashingiweho:

Itegeko Ngenga n° 03/2012/OL ryokuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo 81 (1).

Nta manza zafashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mukagatare Grâce ni umunyarwandakazi wari warahunze mu 1960 kubera impamvu za politiki zari mu gihugu muri kiriya gihe, mu 1994 agaruka mu Rwanda ajya gutura mu cyahoze ari Intara ya Butare. Mu 1995 yubatse mu kibanza avuga ko yari ahawe na Komini Ngoma, akaba ariho atuye. Mu mwaka wa 2000, Bwanakeye François yatangiye kurega Mukagatare ko yamwubakiye mu busitani, ikibazo gikurikiranwa mu nzego z'ubuyobozi.

[2] Mu mwaka wa 2006, Bwanakeye François yareze Mukagatare Grâce mu Rukiko Rwisumbuye rwa Huye asaba guhagarikisha ibohozwa ry'ubwubatsi buri mu murima we. Mu rubanza RC 0069/06/TGI/HYE/RC0002/06/TP/BUT rwaciwe kuwa 29/09/2006 n'Urukiko Rwisumbuye rwa Huye, rwemeje ko Mukagatare Grâce asenya Bingalo n'amazu yubatse mu murima wa Bwanakeye François akabivanamo mu gihe kitarenze iminsi mirongo itatu (30).

[3] Mukagatare ntiyishimiye imikirize y'urubanza maze arujuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, rwaciye urubanza RCA 1633/06/HC/NYA ku wa 03/11/2008 rwemezako Mukagatare atsinzwe, ko imikirize y'urubanza RC 0069/06/TP/BUT rwaciwe n'Urukiko Rwisumbuye rwa Huye kuwa 29/09/2006 idahindutse mu ngingo zarwo zose.

[4] Mukagatare Grâce ntiyishimiye imikirize y'urubanza arujurira mu Rukiko rw'Ikirenga, nyuma y'inzitizi y'iburabubasha yari yabyukijwe n'uhagarariye Bwanakeye, Urukiko rw'Ikirenga rwemeje ko ubujurire bwakozwe ku rubanza RCA 1633/06/HC/NYA rwaciwe ku itariki ya 3/11/2006 n'Urukiko Rukuru, Urugereko rwa Nyanza, butari mu bubasha bw'Urukiko rw'Ikirenga.

[5] Mukagatare abonye icyo cyemezo yagannye Urwego rw'Umuvunyi asaba ko urubanza RCA 1633/06/HC/NYA rwasubirwamo ku mpamvu z'akarengane, maze ku itariki ya 27/3/2013, Urwego rw'Umuvunyi rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza rumaze kuvugwa rwasubirwamo ku mpamvu z'akarengane rwagejejweho na Mukagatare.

[6] Urwego rw'Umuvunyi ruvuga ko impamvu z'akarengane zigaragara muri urwo rubanza zishingiye ku byangombwa Mukagatare yerekanye mu Rukiko Rukuru, Urugereko rwa Nyanza, bigaragaza ko ikibanza cyaburanwaga ari icye, nyamara urwo rukiko ntirubyiteho. Ibyo akaba ari na byo bikubiye mu mwanzuro watanzwe na Mukagatare mu Rukiko rw'Ikirenga agaragaza akarengane yagiriwe.

[7] Iburanisha mu ruhame ryabaye ku itariki ya 16/09/2014, Mukagatare aburanirwa na Me Hakizimana John, naho Succession Bwanacyeye iburanirwa na Me Ngirabakunzi Evariste wahise atanga inzitizi yo kutakira ikirego avuga ko kitubahirije ingingo ya 79 n'iya 81z'Itegeko Ngenga n° 03/2012/OL ryo ku wa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO.

Kumenya niba inzitizi yatanzwe na Succession Bwanakeye François yo kutakira ikirego cya Mukagatare ifite ishingiro.

[8] Me Ngirabakunzi Evariste yatanze inzitizi yo kutakira ikirego cya Mukagatare mu rwego rw'akarengane avuga ko nta raporo y'ubugenzuzi bw'inkiko yabonye cyangwa se ngo igaragare muri dosiye, akavuga kandi ko Mukagatare Grâce yatanze ikirego ashingiye ku ngingo 81, agace ka 2°, y'Itegeko Ngenga n° 03/2012/OL ryo ku wa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga yemeza ko inkiko zirengagije amategeko n'ibimenyetso bigaragarira buri wese, kandi nyamara mu rubanza rwaciwe n'Urukiko Rwisumbuye rwa Huye Mukagatare yarasabwe ibimenyetso agatanga "acte de notoriété" yo ku itariki ya 30/3/2000 n'ibaruwa yamuhaga uburenganzira bwo kubaka, urukiko rugasanga iyo "acte de notoriété" yaremezaga ko afite Bar Isangano, ko itamuhaga ikibanza, akaba yarayubatsemo atabyumvikanyeho na nyiracyo. Arangiza avugako nta karengane kabayeho kuko ibyo bimenyetso avuga ko byirengagijwe byasuzumwe n'urukiko ntirwabiha agaciro.

[9] Me Hakizimana John uburanira Mukagatare Grâce we avuga ko iyi nzitizi itahabwa agaciro kubera ko ku birebana na raporo y'ubugenzuzi atari Mukagatare wagombaga kuyitanga, kuko birebana n'ibimenyetso byirengagijwe, iyo ngingo igomba kuzasuzumwa mu mizi y'urubanza. Arangiza asaba urukiko ko izo ngingo zombi rwazitesha agaciro rukemeza ko inzitizi yo kutakira ikirego yatanzwe n'abazungura ba Bwanakeye nta shingiro ifite.

UKO URUKIKO RUBIBONA

[10] Ingingoya 81, igika cya mbere y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ivuga ko: "Urubanza rwaciwe ku rwego rwanyuma rushobora gusubirishwamo ku mpamvu z'akarengane kubera impamvu zikurikira: 1° iyo hari ibimenyetso simusiga bigaragaza ruswa, ikimenyane cyangwa icyenewabo byagize ingaruka kumikirize y'urubanza bikaba bitarigeze bimenywa n'uwatsinzwe mu gihe cy'iburana; 2° iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese; 3° n'iyo urubanza rudashobora kurangizwa ukurikije imikirize yarwo."

[11] Ku birebana n'uru rubanza, mu ibaruwa ye yo ku itariki ya 27/03/2013, Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCA 1633/11/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku itariki ya 3/11/2008 rwasubirwamo kubera impamvu z'akaregane, agaragaza ko urwo rubanza rwaciwe hirengagijwe ibimenyetso bigaragarira buri wese.

[12] Dosiye igaragaza kandi ko Mukagatare Grâce wasabye ko urubanza rusubirwamo kubera impamvu z'akarengane, mu myanzuro yatanze avuga ko inkiko zabanje zirengangije ibimenyetso bigaragarira buriwese, harimo nk'ibaruwa yamuhaga uburenganzira bwo kubaka *"kiosque"* muri icyo kibanza, *"acte de notoriété"*, *"fiche cadastrale"* y'ikibanza kiburanwa n'amasezerano y'ubukode yagiranye n'ubuyobozi bw'Akarere ka Huye ku itariki ya 28/8/2006.

[13] Ku birebana na raporo y'Ubugenzuzi bw'Inkiko, uhagarariye abazunguraba Bwanakeye avuga ko itagaragara muri dosiye, Urukiko rurasanga iyo raporo nta sano ifitanye n'urubanza, ko n'ubwo yifashishwa kugira ngo urubanza rushyirwe kuri gahunda,

itifashishwa mu gusuzuma akarengane, kuba itari muri dosiye rero bikaba ntaho bibangamiye ababuranyi mu kwiregura.

[14] Urukiko rw'Ikirenga rusanga rero, ingingo ya 81, igika cya mbere, agace ka 2°, y'itegeko Ngenga ryavuzwe haruguru, ivuga ku bimenyetso n'amategeko byirengagijwe, bisobanuye ko ibisabwa n'iyo ngingo ku bijyanye n'iyakirwa ry'ikirego byubahirijwe, ishingiro ryabyo rikazasuzumwa mu mizi y'urubanza, bityo inzitizi yatanzwe n'uburanira abazungura ba Bwanakeye ikaba nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[15] Rwemeje ko inzitizi yatanzwe n'uburanira abazungura ba Bwanakeye François nta shingiro ifite;

[16] Rwemeje ko ikirego cya Mukagatare Grâce cyakiriwe kugirango kizasuzumwe mu mizi;

[17] Rwemeje ko iburanisha ry'urubanza RS/REV/INJUST/CIV 0007/14/CS rizakomeza ku itarikiya13/1/2015;

[18] Ruvuze ko amagarama y'urubanza abaye asubitswe