

## NTEZIRYAYO v. LETA Y'U RWANDA

[Rwanda URUKIKO RW'IKIRENGA – 2010SC – RADA 0010/12/CS (Mukanyundo, P.J., Hatangimbabazi na Gakwaya, J.) 15 Ugushyingo 2013]

*Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Inkiko – Gutakambira ubutegetsu – Igihe bitaba ngombwa gutakamba mu manza z'ubutegetsu – Mu gihe uwatanze ikirego cye atagamije gusaba ivanwaho ry'ibyemezo by'ubutegetsu, gutakambira umutegetsu mbere yo kuregera Inkiko ntibiba bimureba – Itegeko Ngenga N° 02/2013 ryo kuwa 16/06/2013 rihindura kandi ryuzuza Itegeko Ngenga N° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ingingo ya 12 – Itegeko Ngenga N° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 93*

*Amategeko y'imiburanishirize y'imanza z'ubutegetsu – Guteshwa agaciro k'urubanza rwajuririwe – Kutaruburanisha bundi bushya mu mizi yarwo – Kwemererwa kurega mu rwego rwa mbere – Ikoreshwa ry'amategeko mashya y'imiburanishirize ku manza zabanjirije ishyirwaho ryayo –Urukiko rutesheje agaciro urubanza rwajuririwe, ntiruburanisha bundi bushya mu mizi yarwo, ahubwo ababuranyi bashobora kongera kuregera bundi bushya urukiko rwo ku rwego rwa mbere mu gihe bishoboka gukosora amakosa aba yakozwe– Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z' imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 172 – Itegeko n° 18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 339.*

**Incamake y'ikibazo:** Uwajuriye yareze Leta y'u Rwanda bwa mbere mu Rukiko Rukuru asaba ko yamwishyura agaciro k'imodoka ye n'indishyi. Nteziryayo kandi yagobokesheje Gatete na Gacinya avuga kobahoze ari abajandarume kandi bakaba aribo bafatiriye iyo modoka ye. Urukiko Rukuru rwemeje ko ikirego kitakiriwe rushingiye ku nzitizi yazamuwe n'Uhagarariye Leta yu Rwanda kimwe n'abagobokeshejwe bavuze ko ikirego kitagomba kwakirwa kubera ko urega yatakambye akerewe. Yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rutagombaga gushingira ku ngingo y'uregwa n'abagobokeshejwe kubera ko ikirego cye kitari kigamije gusaba gukuraho icyemezo cy'ubutegetsu.

**Incamake y'icyemezo: 1.** Zimwe mu manza z'ubutegetsu zigizwe n'ibirego bisaba ivanwaho ry'ibyemezo by'ubutegetsu n'ibirego byerekeye uburyozwe bushingiye ku zindi mpamvu, bityo mu gihe uwatanze ikirego cye atagamije gusaba ivanwaho ry'ibyemezo by'ubutegetsu, gutakamba ntibiba bimureba kuko aba afite uburenganzira bwo gutanga ikirego cy'ubutegetsu ashingiye ku zindi mpamvu ziteganijwe mu Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'inkiko.

2. Urubanza rwajuririwe rutashwejwe agaciro kubera kutubahiriza ibiteganywa n'iryo tegeko ngenga kandi rukaba rugomba gusubira hasi kugirango rubanze ruburanishwe ku rwego rwa mbere.

**Ubujurire bufite ishingiro.**

**urubanza rwajuririwe ruteshejwe agaciro.  
Uwajuriye afite uburenganzira bwo kuregera bundi bushya Urukiko rubanza.  
Amagarama aherera ku isanduku ya Leta.**

**Amategeko yashingiweho:**

Itegeko Ngenga N° 02/2013 ryo kuwa 16/06/2013 rihindura kandi ryuzuzwa Itegeko Ngenga N° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ingingo ya 12.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 172.

Itegeko Ngenga N° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 93.

Itegeko n°18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 339.

**Nta manza zashingiweho.**

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Nteziryayo Victor yatanze ikirego mu Rukiko Rukuru arega Leta y'u Rwanda bitewe nk'uko ku itariki ya 10/10/1995, imodoka ye Camionette Mazda yari ifite Plaque EB 0448 yatwawe n'abajandarume (Gendarmes) batabyumvikanyeho kandi ko atahwemye kuyisaba ariko ntayisubizwe, akaba yarasabaga ko yakwishyurwa agaciro k'iyi modoka kangana na 17.000.000Frws, indishyi mbonezamusaruro za 155.520Frw zibaze kuwa iyo modoka ifatwa kuwa 10/10/1995, amafaranga y'ukurikiranarubanza angana na 1.000.000frws n'ay'igihembo cy'avoka 5.000.000Frw. Abajandarume Gatete na Gacinya bagobokeshejwe ku ngufu mu rubanza.

[2] Mu gihe cy'iburanisha, uhagarariye Leta y'u Rwanda ndetse n'abahagarariye GATETE na GACINYA batanze inzitizi yo kutakira icyo kirego cya NTEZIRYAYO Victor bashingiye ku ingingo ya 339 igika cya 3 n'icya 4 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets nk'uko ryahinduwe kuri bimwe kugeza ubu, avuga ko ibihe bivugwa muri iyo ngingo byarenze.

[3] Basobanuye ko tariki ya 06/06/2005, ari ho Ministre w'umutekano yandikiye Nteziryayo Victor asubiza ibaruwa ye yo kuwa 22/11/2004, nyamara Nteziryayo Victor akarega akerekerewe kuwa 16/01/2007, nyuma y'imyaka 2, mu gihe itegeko rivuga ko atagomba kurenza igihe cy'amezi 8.

[4] Urukiko Rukuru rushingiye ku ngingo ya 339 yavuzwe haruguru, rwemeje ko inzitizi yatanzwe na Leta y'u Rwanda ifite ishingiro, rwemeza ko ikirego cya NTEZIRYAYO kitakiriwe, rusobanura ko amaze gutakamba ataregeye Urukiko mu gihe nk'uko bivugwa mu

ningo ya 339, ko ahubwo yahisemo kuregera Umuvunyi, kandi ibyo atari impamvu yahagarika ibara by'ibihe biteganywa mu ngingo ya 339 imaze kuvugwa.

[5] Nteziryayo Victor yajurirye mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ko rutagombaga gushingira ku ngingo ya 339 yavuzwe haruguru kubera ko ikirego cye kitari kigamije gusaba gukuraho icyemezo cy'ubutegetsi.

[6] Urukiko rwaburanishije urubanza kuwa 15/10/2013, Nteziryayo ahagarariwe na Me Rutareka Gaetan, Leta y'Urwanda ihagarariwe na Me Mbarushimana Jean Marie Vianney naho Me Zitoni Pierre Claver ahagarariye Gatete Cyprien na Gacinya.

## **II. ISESENGURA RY'IKIBAZO KIGIZE URU RUBANZA**

**Kumenya niba ikirego cya Nteziryayo Victor kitaragombaga kwakirwa n'Urukiko Rukuru.**

[7] Uburanira Nteziryayo avuga ko uyu yajurirye kubera ko Urukiko Rukuru rwafashe icyemezo ruvuga ko yajurirye atinze rushingiye ku ngingo ya 339 y'Itegeko ryerekeye imiburanishirize y'ianza z' imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kandi icyari cyaregewe ari indishyi zigendeye ku ifatira ry'umutungo we, ku bw'iyi mpamvu, ikirego cye kikaba cyari gitandukanye no kuba cyari kuba gishingiye ku kvanaho icyemezo cy'ubuyobozi, akaba asanga rutari gukoresha iriya ngingo.

[8] Avuga ko ibyo gutakamba bivugwa muri iyi ngingo atari byo yakozwe mu gihe yandikaga asaba kurenganurwa, hakabura umuyobozi wafata icyemezo, bityo rero akaba asanga urubanza rwe rutari urw'ubutegetsi nk'uko byemejwe n'Urukiko Rukuru mu rubanza rubanziriza urundi.

[9] Uburanira Leta y'u Rwanda avuga ko kuba ikirego cyaranditswe mu manza z'ubutegetsi, byumvikanisha ko uru rubanza ari urw'ubutegetsi, ko kandi na Nteziryayo atabihakana kuko mu myanzuro ye yagiye atanga, yavugaga ko imodoka ye yatwawe mu rwego rwo kurengera inyungu rusange, agashingira ku ngingo ya 29 y'Itegeko Nshinga ndetse no ku ngingo ya 93 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'inkiko, akaba ari na cyo cyatumye ajya kuregera urukiko adashingiye ku gaciro k'ikiburanwa.

[10] Uburanira Gatete Cyprien na Gacinya avuga ko ikirego cyatanze na Nteziryayo ari icy'ubutegetsi, kuko avuga ko imodoka ye yafatirwe mu rwego rwa « réquisition », nyamara ntagaragaze urwego rwafatirye iyi modoka n'ubwayifatirye kugira ngo hasobanuke uburyo Gatete Cyprien na Gacinya bagomba kugobokeshwa muri uru rubanza.

[11] Akomeza avuga ko Nteziryayo yaciye mu nzira ebyiri kandi zitabangikanywa kuko yaregeye mu Bushinjacyaha bwa Gisirikare (auditorat militaire), nyuma aregera indishyi muri uru rubanza kandi yaragombaga guhitamo inzira imwe.

[12] Avuga ko Nteziryayo yajyanye ikirego cy'indishyi mu nkiko zisanze, nyamara icyo kirego ari ikirego cy'ubutegetsi, nacyo kikaba kitaragombaga kwakirwa kuko cyashajwe.

**UKO URUKIKO RUBIBONA**

[13] Ingingo ya 93 y'Itegeko Ngenga N° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko ryakurikizwaga igihe Nteziryayo yatangaga ikirego mu Rukiko Rukuru, iteganya ibukurikira:

“Urukiko Rukuru rwa Repubulika ruburanisha ibirego bijyanye n'ianza z'ubutegetsu bikurikira:

1° ibirego byose bisaba ivanwaho ry'ibyemezo byafashwe hadakurikijwe amategeko, ibyafashwe n'abatabifitiye ububasha cyangwa abarengera ububasha bahawe, ibyo byemezo bikaba byarafashwe mu rwego rwa nyuma n'abayobozi bo kuva ku rwego rw'Intara n'urw'Umujyi wa Kigali kugeza ku rwa Perezida wa Repubulika;

2° ibirego bisaba ivanwaho ry'ibyemezo by'ubutegetsu cyangwa bisaba indishyi zikomoka mu kutubahiriza sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta;

3° **ibirego byerekeye uburyozwe bushingiye ku zindi mpamvu zitari iza kontaro cyangwa andi masezerano, iyo ibyangijwe byatewe n'igikorwa cyangwa imyitwarire y'ubutegetsu cyangwa se bikaba byarangijwe n'ibikorwa by'imirimo rusange**”;

4° ibirego birebana na za kontaro z'ubutegetsu zidashingiye ku mategeko y'imbonezamubano;

5° ibirego birebana n'impaka zivutse mu kazi hagati y'abantu ku giti cyabo na Leta cyangwa ibigo byayo;

6° ibirego byerekeranye n'ubutabangikanywa bw'imirimo ya Leta itorerwa n'idatorerwa n'indi mirimo;

7° ibirego byerekeranye n'ifatira ku nyungu rusange, ry'imitungo y'abantu yimukanwa n'itimukanwa;

8° ibirego bivutse mu kwimura abantu ku nyungu rusange z'Igihugu.

[14] Ikaragarira Urukiko mu ngingo imaze kuvugwa, ni uko hari impamvu zinyuranye zituma umuntu ashobora kurega Leta, imwe muri izo mpamvu ikaba ituma urubanza ruba urw'ubutegetsu, muri izo mpamvu hakaba harimo izivugwa mu gace ka 1° n'aka 2° zerekeye *ibirego bisaba ivanwaho ry'ibyemezo by'ubutegetsu, hakaba havugwamo mu gace ka 3° ibirego byerekeye uburyozwe bushingiye ku zindi mpamvu.*

[15] Ku bijyanye n'iyakirwa ry'ibirego bivugwa mu gace ka 1° n'aka 2° bisaba ivanwaho ry'ibyemezo by'ubutegetsu, ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'ianza z' imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ryakurikizwaga igihe Urukiko Rukuru rwacaga urubanza, ivuga ko “Ikirego gisaba gukuraho icyemezo cy'umutegetsu cyakirwa gusa iyo cyerekeye icyemezo cy'umutegetsu cyeruye cyangwa kiteruye; ko mbere yo kugitanga, unenga icyemezo cy'umutegetsu agomba kubanza gutakambira umutegetsu wagifashe; uyu nawe akaba agomba gusubiza ubwo butakambe mu gihe cy'amezi abiri (2) abarwa uherye umunsi yabuboneyeho. Iyo adashubije, ubutakambe bufatwa ko atabwemeye.

Mu gihe uwatakambye atishimiye igisubizo yahawe, afite igihe cy'amezi atandatu (6) cyo kuregera urukiko gitangira kubarwa kuva ku munsi yaboneyeho igisubizo....”.

[16] Ibimaze kuvugwa muri iyi ngingo ya 339 y'Itegeko n° 18/2004 ryo ku wa 20/6/2004 rimaze kuvugwa ni ibireba bya birego bisaba gukuraho icyemezo cy'umutegetsi.

[17] Nyamara nk'uko byagaragaye mu ngingo ya 93, hari ibindi birego by'ubutegetsi bitarebwa n'ingingo ya 339 imaze kuvugwa, ibyo bikaba birimo ibivugwa mu gace ka 3° k'iyi ngingo ya 93 byerekeye uburyozwe bushingiye ku zindi mpamvu zitari iza kontaro cyangwa andi masezerano, iyo ibyangijwe byatewe n'igikorwa cyangwa imyitwarire y'ubutegetsi cyangwa se bikaba byarangijwe n'ibikorwa by'imirimo rusange.

[18] Nk'uko bigaragara mu cyemezo ku nzitizi y'iburabubasha cyafashwe n'Urukiko Rukuru kuwa 10/11/2011, urwo Rukiko rwivugira ku rupapuro rwa gatatu rw'icyo cyemezo, ku gika cya 9, ko NTEZIRYAYO arega yashingiye kuri imwe mu mpamvu zivugwa n'ingingo ya 93, aho yasobanuye ko yambuwe imodoka ye n'abajandarume igakoreshwa na Gatete mu kazi ka Leta, ibyo bigahuzwa rero n'ibivugwa mu gace ka 3° k'iyi ngingo ya 93 kavuga ko "Urukiko Rukuru rwa Repubulika ruburanisha ibirego bijyanye n'ianza z'ubutegetsi byerekeye uburyozwe bushingiye ku zindi mpamvu zitari iza kontaro cyangwa andi masezerano, iyo ibyangijwe byatewe n'igikorwa cyangwa imyitwarire y'ubutegetsi cyangwa se bikaba byarangijwe n'ibikorwa by'imirimo rusange".

[19] Urukiko rurasanga rero mu gihe Nteziryayo atatanze ikirego cye agamije gusaba ivanwaho ry'ibyemezo by'ubutegetsi, ibivugwa mu ngingo ya 339 y'Itegeko n° 18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe Urukiko Rukuru rwacaga urubanza bitaramurebaga, kuko yari afite uburenganzira bwo gutanga ikirego cy'ubutegetsi ashingiye ku yindi mpamvu iteganyijwe n'ingingo ya 93 y' Itegeko Ngenga N° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko ryakurikizwaga igihe yatangaga icyo kirego.

[20] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rusanga nta mpamvu yari ihari yo kutakira ikirego cye mu Rukiko Rukuru, bityo ubujurire bwe bukaba bufite ishingiro, urubanza rwajuririwe rukaba rugomba guteshwa agaciro kubera kutubahiriza ibiteganywa n'ingingo ya 93 yavuzwe haruguru.

[21] Urukiko rurasanga rero ubwo ikirego cya Nteziryayo kitigeze gisuzumwa ku rwego rwa mbere nk'uko byateganywaga n'ingingo ya 93 y' Itegeko Ngenga N° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko, uru rubanza rugomba gusubira hasi kugirango rubanze ruburanishwe ku rwego rwa mbere hashingiwe ku gace ka 3 k'ingingo ya 93 imaze kuvugwa nk'uko n'ubundi byari mu cyemezo urwo Rukiko rwari rwafashe kuwa 10/11/2011.

[22] Urukiko rurasanga ariko ibirego bivugwa mu gace ka 3 k'ingingo ya 93 imaze kuvugwa byarashyizwe mu bubasha bw'inkiko zisumbuye hakurikijwe ibiteganywa n'ingingo ya 12 y' Itegeko Ngenga N° 02/2013 ryo kuwa 16/06/2013 rigena imiterere, imikorere n'ububasha by'inkiko, bityo rero Urukiko rufite ubungubu ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere akaba Urukiko Rwisumbuye rwa Nyarugenge.

[23] Ingingo ya 172 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'ianza z' imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko iyo

“Urukiko rutesheje agaciro urubanza rwajuririwe, rutaruburanisha bundi bushya mu mizi yarwo, ahubwo abaturanyi bashobora kongera kuregera bundi bushya urukiko rwo ku rwego rwa mbere mu gihe bishoboka gukosora amakosa aba yakozwe”.

[24] Hashingiwe kuri iyo ngingo, Urukiko rurasanga mu gihe Nteziryayo Victor akifuzaga gukomeza ikirego yari yatanze, afite uburenganzira bwo kuregera bundi bushya Urukiko Rwisumbuye rwa Nyarugenge ari narwo rufite ububasha bwo kuburanisha ikirego cye ku rwego rwa mbere nk’uko byavuzwe haruguru.

### **III. ICYEMEZO CY’URUKIKO**

[25] Rwemeje ko ubujurire bwa Nteziryayo Victor bufite ishingiro.

[26] Rwemeje ko urubanza rwajuririwe ruteshejwe agaciro.

[27] Rwemeje ko Nteziryayo Victor afite uburenganzira bwo kuregera bundi bushya Urukiko Rwisumbuye rwa Nyarugenge, ari narwo rufite ububasha bwo kuburanisha ikirego cye ku rwego rwa mbere.

[28] Rutegetse ko amagarama y’ibyakoze kuri uru rubanza aherera ku Isanduku ya Leta.