UBUSHINJACYAHA v. NYARWAYA

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/PEN0006/10/CS (Kayitesi Z., P.J., Rugabirwa na Gatete, J.) 24 Ukwakira 2014]

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Gusubirishamo urubanza ingingo nshya – Ibanzirizasuzuma – Ububasha bw'abaregera indishyi mu bujurire bw'icyemezo cy'ibanzirizasuzuma – Bafite uburenganzira bwo kumvwa mu bujurire ku cyemezo cy'ibanzirizasuzuma kuko baba barabaye ababuranyi mu manza zabanje kandi ifatwa ry'icyemezo kuri urwo rubanza rikaba rishobora kugira ingaruka ku rubanza rwarabahesheje indishyi – Itegeko Nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3.

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Gusubirishamo urubanza ingingo nshya – Ukwemerwa kw'impamvu zishingirwaho mu gusubirishamo urubanza ingingo nshya – Kuba ibaruwa yatanzwe nk'ikimenyetso gishya yaratanzwe n'umutangabuhamya wabaye umuburanyi mu rubanza kandi ntagaragaze ko ukuri yakumenye nyuma y'icibwa ry'urubanza ntibyafatwa nk'ikimenyetso gishya – Itegeko Nº 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 180 na 186.

Incamake y'ikibazo: Nyarwaya Straton hamwe n'abandi batajuriye muri uru rukiko barezwe n'ubushinjacyaha mu Rukiko Rukuru bashinjwa ubufatanyacyaha mu kwica Kayanda Charles. Urukiko mu guca urubanza rwasanze nta bimenyetso bihari bihamya Nyarwaya Straton icyaha. Ubushinjacyaha n'abaregera indishyi bajuririye mu Rukiko rw'Ikirenga nyuma yo kutishimira imikirize y'urubanza.

Urukiko rwajuririwe rwahamije abaregwaga icyaha rusanga impamvu nkomezacyaha ziruta nyoroshyacyaha rubahanisha buri wese igifungo cya burundu banategekwa kwishyura indishyi zitandukanye.

Nyarwaya yasabye gusubirishamo urubanza ingingo nshya avuga ko nyuma y'icibwa ry'urubanza mu mizi Ngabonziza Sylvestre yanditse ibaruwa imushinjura igaragaza ko yari yagambaniwe.

Nyuma Urukiko mu cyemezo cyarwo cy'ibanzirizasuzuma rwasanze iyo baruwa itujuje ibisabwa n'amategeko kugirango uru rubanza rusubirishwemo ingingo nshya bityo rwemeza ko ikirego cye kitakiriwe.

Yajuririye iki cyemezo, abaregera indishyi n'ubushinjacyaha baboneraho kuza mu rubanza . Mu iburanisha Nyarwaya n'abamwunganiraga bazamuye inzitizi bavuga ko abaregera indishyi batagombye kuza muri uru rubanza kuko icyaregewe ari ukujuririra icyemezo cy'ibanzirizasuzuma kitabareba, bungamo ko igihe cyo kuburana urubanza mu mizi kitaragera. Abaregera indishyi bavuze ko bari ababuranyi mu rubanza kandi n'uru bakaba barufitemo inyungu kubera indishyi batsindiye.

Ku bijyanye no gusubirishamo urubanza ingingo nshya, uwajuriye yavuze ko urukiko ntacyo rwavuze ku ngingo z'amategeko yashingiyeho icyifuzo cye. Anongeraho ko Umucamanza yari mu nteko yamuburanishije mu mizi. Asaba icyemezo cy'ibanzirizasuzuma gukurwaho ngo kuko kibogamye.

Ubushijacyaha bwo buvuga ko iyo baruwa idakwiye gufatwa nk'ikimenyetso gishya kuko uwayanditse yabaye umuburanyi muri urwo rubanza.

Incamake y'icyemezo: 1. Kuba abaregera indishyi barabaye ababuranyi mu manza zose zibanziriza urusabirwa gusubirishwamo ingingo nshya, bibaha ububasha bwo kuza mu rubanza rw'ibanzirizasuzuma kubera inyungu barufitemo kuko imikirize yarwo ifite ingaruka ku rubanza rwabaheshe je indishyi.

2. Kuba ibaruwa ishinjura uregwa yaranditswe n'uwabaye umuburanyi mu rubanza kandi mu mvugo ze ntasobanure ko ukuri yakumenye nyuma yarwo bituma itafatwa nk'ikimenyetso gishya cyashingirwaho mu gusubirishamo urubanza ingingo nshya.

3. Nta kimenyetso kigaragaza ko icyemezo cy'ibanzirizasuzuma cyafashwe n'umucamanza wari waburanishije Nyarwaya mu rubanza rusabirwa gusubirishwamo ingingo nshya nk'uko dosiye y'urubanza ibigaragaza ku bw'ibyo rero icyemezo cy'ibanzirizasuzuma kikaba kitagomba guhinduka.

Ubujurire burakiriwe.
Ubujurire nta shingiro bufite.
Nta gihindutse ku cyemezo kijuririrwa.

Amategeko yashingiweho:
Itegeko Nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3.
Itegeko Nº 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 180 na 186.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, ku cyicaro cyarwo i Kigali, Nyarwaya Straton aregwa gufatanya na Mazimpaka Oliva, Ngabonziza Sylvestre na Sande Benison kwica Kayanda Charles. Mu rubanza RP002/05/HC/KIG, Urukiko Rukuru rwasanze nta bimenyetso bihamya Nyarwaya Straton icyaha, kandi imvugo ya Ngabonziza na Sande zishinja Nyarwaya zivuguruzanya nuko rwemeza ko Nyarwaya ari umwere.

[2] Ubushinjacyaha hamwe n'abaregera indishyi ntibishimiye imikirize y'urubanza, buri wese ajuririra Urukiko rw'Ikirenga. Ubujurire bwahurijwe hamwe buhabwa Nº RPA 0018, RPA 0152 na RPA 0153.

[3] Mu rubanza RPA 0018/05/CS- 0152/05/CS -0153/05/CS rwaciwe kuwa 08/05/2009, Urukiko rwemeje ko Nyarwaya, Mazimpaka, Ngabonziza na Sande bahamwa n'icyaha cyo kwica Kayanda Charles kandi impamvu nkomezacyaha ziruta impamvu nyoroshyacyaha, rubahanisha buri wese igihano cy'igifungo cya burundu, runategeka abahamwa n'icyaha gutanga indishyi zitandukanye.

[4] Kuwa 03/08/2009, Nyarwaya Straton yatanze ikirego mu Rukiko rw'Ikirenga asaba ikosorwa ry'urubanza RPA 0018/05/CS-0153/05/CS- 0153/05/CS rwaciwe kuwa 08/05/2009 kubera ko hari ibyemezo ndetse n'imiburanire ye itaragaragaye muri matolewa y'urubanza.

[5] Mu rubanza RS/RECT/PEN/0001/09/CS rwaciwe kuwa 29/10/2010, Urukiko rw'Ikirenga rwasanze ikirego cya Nyarwaya gisaba gukosora urubanza gifite ingaruka yo guhindura icyemezo cy'Urukiko, rwemeza ko nta shingiro gifite hashingiwe ku ngingo ya 154 y'Itegeko Nº18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ibucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ibirego bisaba gukosora urubanza biburanishwa mu buryo nta guhindurwa ku cyemejwe n'Urukiko.

[6] Kuwa 28/10/2009, Nyarwaya Straton yaregeye Urukiko rw'Ikirenga gusubirishamo urubanza ingingo nshya avuga ko nyuma y'icibwa ry'urubanza mu mizi, Ngabonziza Sylvestre yanditse ibaruwa yo kuwa 26/08/2009 imushinjura (cote 4), igaragaza ko yari yagambaniwe na Gakuba Kabati, Mazimpaka Olive, Sande Benison na Ngabonziza Sylvestre.

[7] Mu cyemezo cy'ibanzirizasuzuma Nº RS/REV/PEN0060/09/CS - RPA0018/05/CS - RPA0152/05/CS - RPA0153/05/CS cyo kuwa 14/12/2009, Umucamanza yasanze ibaruwa ya Ngabonziza itujuje ibisabwa n'amategeko kugirango urubanza rusubirishwemo ingingo nshya, yemeza ko ikirego cya Nyarwaya kitakiriwe kubera ko kitujuje ibisabwa n'amategeko.

[8] Nyarwaya yajuririye iki cyemezo, ubujurire bwe bwandikwa kuri Nº RS/REV/PEN0006/10/CS. Iburanisha mu ruhame ryatangiye kuwa 07/07/2014, rikomeza kuwa 22/09/2014, Nyarwaya Straton ahari kandi yunganiwe na Me Buhuru Pierre Celestin na Me Manirakiza Claude, abaregera indishyi hagarariwe na Gakuba Kabati bunganiwe na Me Mutembe Protais, naho Ubushinjacyaha buhagarariwe na Bunyoye Grace.

[9] Iburanisha ritangiye, Nyarwaya n'abamwunganiye bagaragaje ikibazo cyuko abaregera indishyi batagomba kuba muri urwo rubanza kuko icyaregewe ari ukujuririra icyemezo cy'ibanzirizasuzuma kitabareba, kandi ko igihe cyo kuburana urubanza mu mizi kitaragera.

[10] Kuri icyo kibazo, Me Mutembe wunganira abaregera indishyi yashubije ko mu rubanza RPA0018/05/CS-0152/05/CS-0153/05/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 08/05/2009, abaregera indishyi bose bari barurimo kandi ko bafite inyungu muri uru rubanza kubera indishyi batsindiye, bityo akaba asanga kuba bahagaze imbere y'Urukiko bikurikije amategeko. Naho Uhagarariye Ubushinjacyaha avuga ko abaregera indishyi baburanye mu Rukiko Rukuru baratsindwa, bajuririra muri uru Rukiko baratsinda, ko kuri we, asanga ari ababuranyi muri uru rubanza.

[11] Urukiko rwasanze abaregera indishyi barabaye ababuranyi mu manza zibanziriza uru (cotes 323-324), kandi bafite inyungu muri uru rubanza kubera ko imikirize yarwo ifite ingaruka ku rubanza rwabahesheje indishyi, rufata icyemezo mu ntebe, rwemeza ko ari ababuranyi muri uru rubanza kandi ko barugumamo hashingiwe ku ngingo ya 3 y'Itegeko Nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

II. IKIBAZO KIGIZE URU RUBANZA N'ISESENGURA RYACYO

Kumenya niba hari impamvu yatuma urubanza rwa Nyarwaya Straton rusubirishwamo ingingo nshya.

[12] Nyarwaya avuga ko icyatumye ajurira ari uko Umucamanza w'ibanzirizasuzuma ntacyo yavuze ku ngingo z'amategeko yashingiyeho asaba gusubirishamo urubanza ingingo nshya, kandi ko yaje no gusuzuma agasanga uwo mucamanza yari mu nteko yamuburanishije mu mizi, bityo akaba asaba ko yarenganurwa kubera ko icyemezo cy'ibanzirizasuzuma kibogamye.

[13] Me Manirakiza wunganira Nyarwaya avuga ko Urukiko rwishe itegeko rushingira ku mvugo za Ngabonziza nyamara atari yemerewe gutanga ubuhamya mu rubanza aburanamo, ko byatumye abesheyera Nyarwaya kubera akagambane, ko nubwo ataribyo biburanwa, Urukiko rukwiye gufata ko Ngabonziza yigaruye akanyomoza ibyo yavuze mbere. Avuga kandi ko urwandiko Ngabonziza yanditse ari ikimenyetso gishya kuko rutigeze ruburanwaho, ko rukwiye gutuma icyemezo cy'ibanzirizasuzuma gihinduka, asaba ko ikirego cya Nyarwaya cyakirwa hashingiwe ku ngingo ya 180(4^{o}) y'Itegeko Nº 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga ikirego gitangwa.

[14] Asoza avuga ko ikindi gikwiye gutuma icyemezo cy'ibanzirizasuzuma giteshwa agaciro ari uko cyafashwe n'umucamanza wari waburanishije Nyarwaya mu rubanza rusabirwa gusubirishwamo ingingo nshya, ko iyo ari ingingo ikomeye ikwiye gutuma Urukiko rwemeza ko ubujurire bwa Nyarwaya bufite ishingiro.

[15] Me Buhuru nawe wunganira Nyarwaya avuga ko mbere Ngabonziza yabeshye Urukiko kubera ko yashakaga gufasha abaregera indishyi, ko urwandiko rwe rwaje nyuma y'isomwa ry'urubanza mu mizi, bityo ko agace ka 3 n'agace ka 4 tw'ingingo ya 180 y'Itegeko Nº 13/2004 ryo kuwa 17/05/2004 ryavuzwe haruguru atari two twonyine tugomba gusuzumwa muri uru rubanza, ahubwo ko igisuzumwa ari ukumenya niba mu ngingo yose ya 186 hari icyemerera Nyarwaya gusubirishamo urubanza ingingo nshya kubera ko iyo ngingo isaba gusa ikimenyetso gishya bitandukanye no gusaba kopi y'urubanza rwahamije Ngabonziza gushinja ibinyoma.

[16] Me Mutembe uburanira abaregera indishyi avuga ko Ngabonziza yashinje Nyarwaya mu Bugenzacyaha, mu Bushinjacyaha no mu Rukiko, ko bidasobanutse uko yaba yarategereje icibwa ry'urubanza kugira ngo abone ko yabeshye, kandi ko ababuranira Nyarwaya batagaragariza Urukiko ikimenyetso cy'uko noneho avugisha ukuri. Asoza avuga ko ubuhamya bwa Ngabonziza ataricyo kimenyetso cyonyine cyashingiweho Nyarwaya ahamwa icyaha, kubera ko hari impurirane z'ibimenyetso bigaragaza uruhare rwa Nyarwaya mu mugambi wo kwica Kayanda, ko urubanza rusabirwa gusubirishwamo rwaciwe neza, bityo ko nta na hamwe ingingo yose ya 180 y'Itegeko Nº 13/2004 ryo kuwa 17/05/2004 ryavuzwe haruguru yakoreshwa ngo urwo rubanza rusubirishwemo ingingo nshya.

[17] Uhagarariye Ubushinjacyaha avuga ko ibaruwa yanditswe na Ngabonziza itafatwa nk'ikimenyetso gishya kubera ko Ngabonziza yabaye umuburanyi mu rubanza rusabirwa gusubirishwamo, ko icyari gufatwa nk'ikimenyetso gishya cyari kuba urubanza ruhamya Ngabonziza gushinja ibinyoma, ko mu gihe ntaruhari, ntaho Urukiko rwahera rumwemerera gusubirishamo urubanza ingingo nshya rushingiye ku ngingo ya 186 y'Itegeko Nº 13/2004 ryo kuwa 17/05/2004 ryavuzwe haruguru.

UKO URUKIKO RUBIBONA

[18] Ku byerekeranye n'impamvu zigomba gushingirwaho kugirango ikirego cyakirwe, ingingo ya 180 y'Itegeko Nº 13/2004 ryo kuwa 15/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga ikirego gitangwa iteganya ko: "Gusubirishamo urubanza rw'inshinjabyaha rwaciwe burundu ingingo nshya bishobora gusabwa ku nyungu z'umuntu wese wahamijwe icyaha cy'ubugome cyangwa gikomeye iyo: 1º umuntu amaze gucibwa urubanza rw'uko yicanye, hanyuma hakaboneka ibimenyetso bihagije byemeza ko uwo bakeka ko yishwe atapfuye; 2º bamaze gucira umuntu urubanza ku cyaha yashinjwaga, hakaboneka urundi rubanza nk'urwo rwahannye undi muntu kuri icyo cyaha izo manza zombi zivuguruzanya kandi zigaragaza ko umwe mu bakatiwe yarenganye; 3º umwe mu batangabuhamya yahaniwe kuba yarabeshyeye uwahanwe kandi urubanza rumuhana rwaramaze gucibwa; 4º n'iyo bamaze guca urubanza, hakaboneka ibimenyetso bitagaragaye mbere byerekana ko uwakatiwe yatsinzwe azize akarengane".

[19] Dosiye y'urubanza igaragaza ko mu gusaba gusubirishamo urubanza ingingo nshya, Nyarwaya atanga impamvu zikurikira:

a) Kuba Umucamanza w'ibanzirizasuzuma yaratesheje agaciro nta mpamvu ubuhamya bumushinjura buri mu rwandiko rwa Ngabonziza,

b) Kuba ubwo buhamya ari ikimenyetso gishya hashingiwe ku biteganywa n'ingingo ya 180, agace ka 4, y'Itegeko Nº 13/2004 ryo kuwa 17/05/2004 ryavuzwe haruguru.

[20] Urukiko rurasanga urubanza Nº RPA 0018/05/CS-0152/05/CS-0153/05/CS rwaciwe kuwa 08/05/2009, rugaragaza ko mu gufata icyemezo kuri Nyarwaya, mubyo Urukiko rwashingiye harimo imvugo za Ngabonziza Sylvestre, Sande na Mazimpaka, (cotes 322-324), Ngabonziza Sylvestre akaba yari umuburanyi muri urwo rubanza, utavuga ko ukuri yakumenye nyuma yarwo, bityo urwandiko yanditse rukaba rutafatwa nk'ikimenyetso gishya cyashingirwaho urubanza rwa Nyarwaya rusubirishwamo ingingo shya.

[21] Urukiko rurasanga rero Umucamanza w'ibanzirizasuzuma nta ngingo yirengagije afata icyemezo mu ziteganywa n'ingingo ya 180 y'Itegeko Nº 13/2004 ryo kuwa 15/05/2004 ryavuzwe haruguru ryakoreshwaga ikirego gitangwa, bityo ibyo Nyarwaya Straton asaba bikaba bitahabwa ishingiro.

[22] Ku byerekeranye n'ibyo Uwunganira Nyarwaya avuga ko icyemezo cy'ibanzirizasuzuma cyafashwe n'umucamanza wari waburanishije Nyarwaya mu rubanza rusabirwa gusubirishwamo ingingo nshya, Urukiko rurasanga, uretse ko nta naho bihuriye n'ibishingirwaho ngo ikirego gisaba gusubirishamo urubanza ingingo nshya cyakirwe, atari ukuri, kuko dosiye y'urubanza irimo ibyemezo bya Perezida w'Urukiko rw'Ikirenga icyo kuwa 07/02/2006 n'icyo kuwa 15/03/2006, (cotes 3 na 94), bigaragaza ko Umucamanza w'ibanzirizasuzuma atari mu nteko yaburanishije urwo rubanza rusabirwa gusubirishwamo ingingo nshya, ibi bikanagaragazwa kandi na kopi y'urwo rubanza.

[23] Hashingiwe ku bisobanuro n'amategeko byatanzwe haruguru, Urukiko rurasanga icyemezo cy'ibanzirizasuzuma cyafashwe ku kirego cyo gusubirishamo ingingo nshya urubanza RPA 0018/05/CS - 0152/05/CS - 0153/05/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 08/05/2009 kitagomba guhinduka.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeye kwakira ubujurire bwa Nyarwaya Straton ku cyemezo RPA 0018/05/CS - 0152/05/CS - 0153/05/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 08/05/2009 kuko bwatanzwe mu buryo bwemewe n'amategeko.

[25] Rwemeje ko ubwo bujurire nta shingiro bufite.

[26] Rwemeje ko nta gihindutse ku cyemezo cy'ibanzirizasuzuma RP0435/09/PRE-EX/CS mu rubanza RS/REV/PEN0060/09/CS - RPA 0018/05/CS - RPA0152/05/CS - RPA0153/05/CS cyo kuwa 14/12/2009.