AKARERE KA GATSIBO v. RUZABARANDE N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RADA0004/14/CS (Mutashya, P.J., Munyanyeri na Gakwaya, J.) 26 Nyakanga 2015]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Inzitizi – Ububasha, inyungu n'ubushobozi bw'Akarere mu gutanga ikirego – Akarere gashobora gutanga ikirego mu izina ryako ariko kagomba guhamagarwa mu izina ry'umuyobozi wako – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3 n'iya 31.

Amategeko agenga ububasha bw´Inkiko – Ububasha bw'Urukiko rw'Ikirenga nk'urukiko rw'ubujurire hashingiwe ku ndishyi zagenwe mu rubanza – Mu kumenya ububasha bw'Urukiko rw'Ikirenga nk'urukiko rw'ubujurire harebwa indishyi zagenwe mu rubanza aho kureba izahawe buri muburanyi mu rubanza – Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28.

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Inzitizi yo kutakira ubujurire – Impamvu zimwe – Urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ntirushobora kujuririrwa mu Rukiko rw'Ikirenga – Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28.

Incamake y'ikibazo: Ruzabarande na bagenzi be bareze akarere ka Gatsibo mu Rukiko Rwisumbuye rwa Nyagatare kuba karigabije amasambu yabo, kakayaha COOPRORIZ – NTENDEZI katabahaye ingurane n'agaciro k'ibyari biri kuri ubwo butaka. Akarere ka Gatsibo ko kireguye kavuga ko ubwo butaka atari ubwabo ahubwo ko ari igishanga cyako kishubije.

Urwo Rukiko rwemeje ko Akarere ka Gatsibo katwaye mu buryo budakurikije amategeko ubwo butaka karegwa kuko nta ngurane ikwiye n'ikiguzi cy'ibyari biburiho kabanje kubaha, maze gategekwa guha Ruzabarande na bagenzi be ingurane ikwiye, ikiguzi cy'ibyari biburiho n'indishyi zibikomokaho.

Ababuranyi bombi bajuririye uru rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana aho Akarere ka Gatsibo kavuga ko Urukiko rwagaciye indishyi kandi ubwo butaka ari igishanga cya Leta naho Ruzabarande na bagenzi be bakavuga ko bagenewe indishyi nkeya. Urwo Rukiko rwemeje ko ubujurire bw'Akarere ka Gatsibo nta shingiro bufite naho Ruzabarande na bagenzi be rubagenera amafaranga y'igihembo cy'Avoka yiyongera kuyo buri wese yari yagenewe ku rwego rwa mbere nk'igihembo cya avoka.

Akarere ka Gatsibo kongeye kujuririra urwo rubanza mu Rukiko rw'Ikirenga. Mu gihe cy'iburanisha Ruzabarande na bagenzi be batanze inzitizi eshatu zigamije kutakira ubujurire bw'Akarere ka Gatsibo bavuga ko Akarere kareze ubwako aho kurega mu izina ry'umuyobozi wako; ko indishyi zatanzwe mu rubanza rujuririrwa zitagera ku mafaranga miliyoni 50 kubera ko Akarere kaburana n'abaturage 37 kandi buri wese akaba yarakoze umwanzuro we, atanga ikirego cye n'igarama rye, bityo ko n'urukiko rwaciye urubanza rutigeze ruha umuntu umwe indishyi zigeze kuri 50.000.000Frw n'ubwo izo ndishyi zose ziteranyijwe zibyara agera kuri 200.000.000Frw, ikindi ni uko Akarere kajuririye urubanza katsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

Ku nzitizi ya mbere Akarere ka Gatsibo kavuga ko Itegeko rivuga uburyo bw'ihamagara ritavuga uburyo bwo gutanga ikirego. Ku nzitizi ya kabiri kavuga ko ikiburanwa ari igishanga, bityo hakaba hagomba gushingirwa ku mategeko agenga igishanga aho gushingirwa ku gaciro k'amafaranga naho ku nzitizi ya gatatu kakavuga ko Umucamanza wo mu Rukiko Rwisumbuye yemeje ko isambu ikirego gishingiyeho ari igishanga kiri mu mutungo rusange wa Leta, kandi icyo cyemezo kikaba kitagaragara mu byo Urukiko Rukuru rwemeje, bityo impamvu zashingiweho akaba atari zimwe.

Incamake y'icyemezo: 1. Akarere gashobora gutanga ikirego mu izina ryako ariko kagomba guhamagarwa mu izina ry'umuyobozi wako.

2. Mu kureba ububasha bw'Urukiko rw'Ikirenga nk'urukiko rw'ubujurire hashingirwa ku ndishyi zagenwe mu rubanza aho kureba izahawe buri muburanyi mu rubanza.

3. Kuba inkiko zombi zarasobanuye ko n'ubwo ahaburanwa haba hari igishanga, bitari kuba impamvu yo gusenyera Ruzabarande na bagenzi be no kubononera ibyabo nta ngurane bahawe kandi bari barahahawe n'ubuyobozi bubifitiye ububasha bigaragara ko katsinzwe mu rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, bityo urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ntirushobora kujuririrwa mu Rukiko rw'Ikirenga.

Inzitizi ijyanye no kutakira ikirego kubwo gutsindwa ku mpamvu zimwe ifite ishingiro.
Ubujurire ntibwakiriwe.
Amagarama aherereye ku wajuriye.

Amategeko yashingiweho:
Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28.
Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3 n'iya 31.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyagatare, Ruzabarande Festo na bagenzi be barega Akarere ka Gatsibo kuba karigabije amasambu yabo, kakayabambura, kakayaha COOPRORIZ-NTENDEZI kugira ngo iyahingemo umuceri, basaba Urukiko gutegeka Akarere ka Gatsibo kubaha ingurane n'agaciro k'ibyari biri kuri ubwo butaka. Akarere ka Gatsibo ko kiregura kavuga ko aho hantu hatari amasambu yabo ahubwo ko kishubije igishanga cyako cya Ntendezi. Urwo rukiko rwaciye urubanza RAD0038 – 0076/TGI/NYG, kuwa 11/7/2013, rwemeza ko Akarere ka Gatsibo katwaye mu buryo budakurikije amategeko ubutaka karegwa na Ruzabarande Festo na bagenzi be, kuko nta ngurane ikwiye n'ikiguzi cy'ibyari biburiho kabanje kubaha, rutegeka Akarere ka Gatsibo guha Ruzabarande na bagenzi be ingurane ikwiye, ikiguzi cy'ibyari biburiho n'indishyi zibikomokaho.

[2] Akarere ka Gatsibo na Ruzabarande na bagenzi be ntibishimiye imikirize y'urubanza bajuririra mu Rukiko Rukuru, Urugereko rwa Rwamagana. Akarere ka Gatsibo kavuga ko Urukiko rwagaciye indishyi kandi ubwo butaka ari igishanga cya Leta, naho Ruzabarande na bagenzi be bavuga ko Urukiko rwabageneye indishyi nkeya ugereranyije n'igihe ubwo butaka bamaze babwambuwe.

[3] Urwo rukiko rwaciye urubanza RADA0016/13/HCI/RWG - RADA0054/13/HCI/RWG, kuwa 17/4/2014, rwemeza ko ubujurire bw'Akarere ka Gatsibo nta shingiro bufite, rwemeza ko urubanza rwajuririwe ruhindutse gusa ku ndishyi zijyanye n'igihembo cya avoka, buri wese mu bajuriye agahabwa 30.000Frw yiyongera kuri 100.000Frw buri wese yari yagenewe ku rwego rwa mbere nk'igihembo cya avoka.

[4] Akarere ka Gatsibo ntikishimiye imikirize y'urubanza, karujuririra mu Rukiko rw'Ikirenga. Me Rumenge Victor yatanze inzitizi eshatu asaba ko ubujurire bw'Akarere ka Gatsibo butakirwa, kuko kareze ubwako aho kurega mu izina ry'umuyobozi wako, ko indishyi zatanzwe mu rubanza rujuririrwa zikaba zitagera kuri miliyoni 50, kandi Akarere kakaba karatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

[5] Urubanza rwaburanishijwe ku nzitizi gusa mu ruhame kuwa 19/05/2015, Ruzabarande na bagenzi be baburanirwa na Me Rumenge Victor, Akarere ka Gatsibo gahagarariwe na Me Kayiranga Bernard.

II. ISUZUMWA RY'INZITIZI ZATANZWE MURI URU RUBANZA

Ku byerekeranye n'inzitizi y'uko Akarere ka Gatsibo kareze ubwako atari mu izina ry'umuyobozi wako.

[6] Me Rumenge Victor avuga ko inzitizi ya mbere irebana no kuba ikirego cyaratanzwe mu buryo budakurikije amategeko kuko Akarere ka Gatsibo (personne morale) kareze ubwako kandi ari urwego rwa Leta, kakaba karagombaga kurega mu izina ry'umuyobozi wako. Asobanura ko nk'uko bisanzwe bigenda, iyo urwego rwa Leta rutanga ikirego, rurega mu izina ry'umuyobozi cyangwa mu izina ry'uhagarariye icyo kigo cya Leta kirega.

[7] Avuga ko ingingo ya 31 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko Akarere (personne morale) gahamagazwa mu izina ry'Umuyobozi wako, akaba ari nako bigomba kugenda iyo karega. Avuga kandi ko ibyo bishimangirwa n'ingingo ya 2 y'iryo tegeko, mu gaka ka mbere kavuga ibisabwa kugira ngo ikirego cyakirwe, aho basobanura ko ikirego kitakirwa iyo urega adafite ububasha, inyungu n'ubushobozi, bityo Akarere ka Gatsibo kareze kakaba kadafite ububasha bwo kurega.

[8] Me Kayiranga Bernard avuga ko iyo nzitizi nta shingiro ifite kubera ko Umuyobozi w'Akarere ka Gatsibo ariwe wasabye ko mandataire wa Leta atanga ikirego kandi akaburanira Akarere, ajuririra urubanza kari karezwemo, ko rero Akarere ka Gatsibo katanze ikirego mu izina ry'Umuyobozi wako, ndetse ko no mu Rukiko Rwisumbuye ariwe wari ugahagarariye, bikaba bitari ngombwa ko hajyaho umukono we. Avuga ko ingingo ya 31 y'Itegeko N°21/2012 ryavuzwe haruguru, ivuga uburyo bw'ihamagara, ko itavuga uburyo bwo gutanga ikirego.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 3 y'Itegeko N°21/2012 ryo kuwa 14/06/2012, ryavuzwe haruguru, iteganya ko: "Uretse iyo itegeko ribiteganya ukundi, ababuranyi bonyine nibo batanga ikirego. Bafite ubwisanzure bwo kugihagarika igihe cyose urubanza rutaracibwa cyangwa ngo kizime ku bw'itegeko". Naho ingingo ya 31 y'iryo tegeko, ivuga ku buryo bw'itumira bwihariye, ko Umuyobozi w'Akarere atumirwa mu izina ry'Akarere.

[10] Urukiko rurasanga, hashingiwe kuri izi ngingo, Umushingamategeko yaragaragaje ko uwifuza kurega wese agomba gutanga ikirego, cyakora ko mu gihe cyo guhamagara ababuranyi, hari abakorerwa ihamagarwa ryihariye, ko Akarere runaka katahamagarwa nk'Akarere ahubwo ko kagomba guhamagarwa mu izina ry'umuyobozi wako, bikaba bisobanuye ko atari ngombwa ko Akarere karega mu izina ry'umuyobozi wako, ariko gahamagarwa, mu izina ry'umuyobozi wako.

[11] Urukiko rurasanga, hashingiwe ku bisobanuro bitanzwe haruguru, ibyo Me Rumenge Victor avuga ko Akarere ka Gatsibo nk'urega muri uru rubanza kadafite ubushobozi nta gaciro byahabwa, inzitizi yo kutakira ubujurire bw'Akarere ka Gatsibo ku mpamvu zuko bwatanzwe mu buryo budakurikije amategeko, ikaba nta shingiro ifite.

Kubyerekeranye n'inzitizi y'iburabubasha kubera ko indishyi zatanzwe mu rubanza rujuririrwa zitagera kuri miliyoni 50.

[12] Me Rumenge Victor avuga ko inzitizi ya kabiri ari iyo babonye nyuma, bakaba barayishyikirije Urukiko mu mwanzuro w'inyongera, irebana n'uko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha imanza zaciwe n'Urukiko Rukuru iyo zagenwemo indishyi zingana na 50.000.000Frw cyangwa se harabayeho impaka, agaciro k'ikiburanwa kakemezwa n'umucamanza ko kangana na 50.000.000Frw, nyamara muri uru rubanza Akarere ka Gatsibo kaburana n'abaturage 37, buri wese yakoze umwanzuro we, atanga ikirego cye n'igarama rye, ndetse buri wese agaragaza n'ibyo asaba ku giti, ndetse n'urukiko ruca urubanza kuri buri muntu ku giti cye, ko mu guca urubanza urukiko rutigeze ruha umuntu umwe indishyi zigeze kuri 50.000.000Frw, cyakora ko izo ndishyi ziteranyijwe zibyara agera kuri 200.000.000Frw, ariyo mpamvu basaba ko ubujurirre butakwakirwa. Asoza atanga urubanza rwazashingirwaho kuko ikiburanwa gisa n'icyo muri uru rubanza, urwo rubanza akaba ari RADAA0012/12/CS rwaciwe kuwa 14/6/2013, Akarere ka Gatsibo kaburana na Ntezirirazaza Adrien na bagenzi be, muri urwo rubanza, uru rukiko rukaba rwaremeje ko ikirego cy'Akarere ka Gatsibo kitakwakirwa kubera ko kajuririye inkiko zombi ku mpamvu zimwe.

[13] Me Kayiranga Bernard avuga ko iyi nzitizi nayo nta shingiro ifite, kuko ikiburanwa ari ubutaka bwo mu gishanga, ko yaba ari amategeko yahozeho cyangwa se amashya, usanga ateganya ubutaka bwinshi buri mu mutungo rusange wa Leta, kandi ko Urukiko rwemera ko ikiburanwa ari igishanga, nyamara ntirurebe amategeko agenga igishanga, umutungo rusange wa Leta, bityo bikaba bidashoboka ko hashingirwa ku gaciro k'amafaranga, kuko bitagereranywa n'umutungo rusange wa Leta. Akomeza avuga ko kuba uburanira abarega Akarere ka Gatsibo avuga ko bagenewe indishyi ziri munsi ya 50.000.000Frw, byaba ari uguhindura ikiburanwa kuko ari umutungo wa Leta, n'ababuranyi bakaba babyemera, bityo ubujurire bukaba buri mu bubasha bw'uru rukiko, kuko iyo nzitizi nta shingiro zifite.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 28, igika cya kabiri, 7°, y'Itegeko Ngenga N°03/2012/OL ryo kuwa 12/06/2012 ryavuzwe haruguru, iteganya ko: "Urukiko rw'Ikirenga rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare, iyo izo manza zagenwemo n'urukiko indishyi zingana nibura na 50.000.000Frw, cyangwa se zifite agaciro kagenwe n'umucamanza igihe habaye impaka, kangana nibura na 50.000.000Frw".

[15] Urukiko rurasanga indishyi Akarere ka Gatsibo kaciwe mu Rukiko Rukuru zaragenwe mu rubanza rumwe RADA0016/13/HC/RWG - RADA0054/13/HC/RW, kandi zikaba zirenze 50.000.000Frw.

[16] Naho kuvuga ko buri muburanyi yagenewe indishyi zitarenze 50.000.000Frw, bikaba bitaherwaho mu kubara indishyi zaciwe muri urwo rubanza, kuko Umushingamategeko yavuze indishyi zagenwe mu rubanza, ntabwo yavuze indishyi zahawe buri muburanyi mu rubanza, bityo hakurikijwe ibiteganywa n'ingingo ya 28(7°) y'Itegeko Ngenga N°03/2012/OL ryavuzwe haruguru, inzitizi y'iburabubasha ishingiye ku gaciro k'indishyi zikurikiranywe ikaba nta shingiro ifite.

Ku byerekeranye n'inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga kubera ko uwajuriye yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

[17] Me Rumenge Victor avuga ko inzitizi ya gatatu ari iyo kuba Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha ubujurire bw'Akarere ka Gatsibo kuko katsinzwe ku rwego rwa mbere no ku rwa kabiri ku mpamvu zimwe, kandi ingingo ya 28(9) y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe rudashobora kujuririrwa mu Rukiko rw'Ikirenga. Asobanura ko ku rwego rwa mbere, Urukiko Rwisumbuye rwa Nyagatare, ku rupapuro rwa cyenda, mu gace ka 24, mu rubanza rwaciwe kuwa 31/07/2013, rwavuze ko n'ubwo ahaburanwa ari igishanga kandi nk'uko byasobanuwe, Akarere kahisubije ku bw'inyungu rusange kandi kari karahahaye Ruzabarande Festo na bagenzi be, umucamanza akaba yaremeje ko abarega bari bagifite aho hantu ku buryo bw'umuco, bwo kuhagura cyangwa se kuhahabwa kubera gusaranganya. Naho mu Rukiko Rukuru, Urugereko rwa Rwamagana, urukiko rwavuze ko ubutaka buburanwa ari ubw'abaturage barega Akarere ka Gatsibo (urupapuro rwa munani agace ka 11), ndetse runagaragaza n'uburyo babubonye, rusobanura neza ko bamwe babubonye ku buryo bwa gakondo n'ababyeyi babo, abandi babuguze naho abandi babusaranganyijwe.

[18] Me Kayiranga Bernard avuga ko inzitizi y'uko Akarere ka Gatsibo katsinzwe ku mpamvu zimwe mu nkiko ebyiri, atari ko biri kuko Umucamanza wo mu Rukiko Rwisumbuye yemeje ko ari igishanga, ni ukuvuga umutungo rusange wa leta, kandi icyo cyemezo kikaba kitagaragara mu byo Urukiko Rukuru rwemeje, bityo, iyo nzitizi ikaba nta shingiro ifite.

UKO URUKIKO RUBIBONA

[19] Ku byerekeye ububasha bw'Urukiko rw'Ikirenga, ingingo ya 28(5°) y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012, rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, rudashobora kujuririrwa mu Rukiko rw'Ikirenga. Muri uru rubanza hakaba hakwiye gusuzumwa niba impamvu zatumye Akarere ka Gatsibo karatsinzwe mu rwego rwa mbere ari nazo zatumye gatsindwa mu rwego rwa kabiri.

[20] Nyuma yo gusesengura imikirize y'urubanza ku rwego rwa mbere, ni ukuvuga mu Rukiko Rwisumbuye rwa Nyagatare kimwe n'imikirize y'uburanza ku rwego rw'ubujurire mu Rukiko Rukuru, Urugereko rwa Rwamagana, Urukiko rurasanga mu kwemeza ko Akarere ka Gatsibo gatsinzwe, harasobanuwe muri izo nkiko zombi, ko n'ubwo ahaburanwa haba hari igishanga, bitari kuba impamvu yo kubasenyera no konona ibyabo nta ngurane bahawe kandi bari barahahawe n'ubuyobozi bubifitiye ububasha bwabahaye ibyemezo bigaragaza ko ari ahabo, mu gihe bahishubije bakaba baragombaga kubibahera indishyi ikwiye.

[21] Hashingiwe ku ngingo ya 28(5°) y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru iteganya ko urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe rudashobora kujuririrwa mu Rukiko rw'Ikirenga, Urukiko rurasanga Akarere ka Gatsibo karatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe mu nkiko zombi zibanza, bityo ubujurire bwatanzwe n'Akarere ka Gatsibo bukaba kutagomba kwakirwa kuko butari mu bubasha bw'Urukiko rw'Ikirenga.

III. ICYEMEZO CY'URUKIKO.

[22] Rwemeje ko inzitizi yatanzwe n'uburanira Ruzabarande Festo na bagenzi be ifite ishingiro.

[23] Rwemeje ko ubujurire bw'Akarere ka Gatsibo butakiriwe.

[24] Rutegetse ko amagarama y'uru rubanza aherereye ku Isanduku ya Leta.