KARANGWA v. MUKASHARANGABO N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RC0005/15/CS (Mutashya, P.J., Munyangeri na Gakwaya, J.) 26 Kamena 2015]

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Inzitizi y'iburabubasha – Ubwoko bw'Ikirego gisaba guhagarika irangizarubanza by'agateganyo – Ikirego cyihutirwa – Kumenya niba Urukiko rw'Ikirenga ruri mu Nkiko zishobora kuregerwa ibirego byihutirwa – Kuba ikirego gisaba guhagarika irangizarubanza by'agateganyo ari ikirego kiburanishwa hakurikijwe imihango ijyanye n'iburanisha ry'ibirego byihutirwa, bisobanura ko bene ibyo birego bihuje kamere n'ibirego byihutirwa – Kuba Urukiko rw'Ikirenga rwaregerwa urubanza rw'iremezo rwerekeranye no gusubirishamo urubanza ku mpamvu z'akarengane, byumvikana ko runafite ububasha bwo gusuzuma ibirego byihutirwa birushamikiyeho – Ntacyabuza ko inzira yo gutanga ikirego cyihutirwa gishamikiye ku kirego cyatanzwe hisunzwe inzira zo kujurira zidasanzwe ikurikizwa no mu manza zirebana n'ibirego bigamije gusubirishamo urubanza ku mpamvu z'akarengane – Kuba icyemezo cyihutirwa cy'Urukiko rw'Ikirenga kitajuririrwa kubera ko ibyemezo byarwo bitajuririrwa, si impamvu ishimangira ko uru rukiko rudafite ububasha bwo kuburanisha ibirego byihutirwa – Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 78 n'iya 89 – Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 316(2^{o}) n'iya 317.

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Gusubirishamo urubanza ku mpamvu z'akarengane – Ababuranyi mu rubanza rusubirishamo urubanza ku mpamvu z'akarengane – N'ubwo Urwego rw'Umuvunyi arirwo rusaba Urukiko rw'Ikirenga gusubiramo urubanza ku mpamvu z'akarengane ariko igihe cyo kuburanisha bene ibyo birego, ababuranyi baguma ari ababuranye urubanza rusubirishwamo ku mpamvu z'akaregane ndetse ni nabo batanga imyanzuro yo kurega n'iyo kwiregura – Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 85 – Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 179, 190, 214(2^{o}) n'iya 316.

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Guhagarika irangizarubanza by'agateganyo – Mu gihe irangizwa ry'urubanza rishobora kononera bamwe mu baburanyi mu gihe baramuka batsinze urubanza baregeye, Urukiko rushobora guhagarika irangiza ry'urubanza mu nyungu z'ubutabera.

Incamake y'ikibazo: Uru rubanza ku nzitizi rukomoka ku rubanza RCA0221/05/HC/KIG - RCA0221/09/HC/KIG rwaburanishijwe mu Rukiko Rukuru rukemeza ko abana bose Karimunda Gérard yabyaranye na Mukasharangabo Eugénie, Nyirakamana Marciana na Mukandori Epiphanie bagomba kumuzungura nta vangura bityo bakagabana umutungo wose uzabarurwa igihe cy'izungura kandi abitabye Imana bakazungurwa n'ababakomokaho. Nyirakamana Marciana wari wagobotse muri urwo rubanza ntiyanyuze n'iyo myanzuro maze aza kwiyambaza Urwego rw'Umuvunyi avuga ko urwo rubanza rurimo akarengane. Urwo Rwego rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba kurusubirishamo ku mpamvu z'akarengane.

Hagati aho ariko, urwo rubanza rwarimo kurangizwa n'uwashinzwe ibyo gushyira mu bikorwa izungura kandi mu byemezo yari ari gushyira mu bikorwa harimo no kugurisha

umutungo wose kugira ngo abazungura babone uko bagabana amafaranga azava mu igurisha. Urukiko rw'Ikirenga rumaze kwandika ikirego, Avoka uhagarariye Karangwa Denis yatanze ikirego cyihutirwa asaba Urukiko gufata icyemezo cy'agateganyo gihagarika irangizwa ry'urwo rubanza mu gihe isubirishamo ryarwo kubera akarengane ritarafatwaho icyemezo ashingiye ku kuba ngo hari inyandiko-mvugo y'inama y'abazungura yabaye hagati ya bamwe gusa kuko hari ubwumvikane buke hagati yabo, igaragaza mu ngingo zayo za 3 na 6 ko inzu iri Gikondo n'indi mitungo itimukanwa bigomba kugurishwa hanyuma bakagabana amafaranga. Yongeraho ko iryo subirishamo ry'urubanza kubera akarengane rishobora kuzavamo icyemezo cy'Urukiko kivuguruzanya n'icy'urubanza ruri kurangizwa, bityo ibyazaba byamaze gukorwa bikaba imfabusa kandi harimo imitungo yaba yaramaze kugurishwa.

Iburanisha ritangiye, Me Twayigize Jean-Claude uhagarariye bamwe mu bazungura baregwa muri urwo rubanza yatanze inzitizi yo kutakira iki kirego cyihutirwa avuga ko kitari mu bwoko bw'ibirego byihutirwa kuko nta kirego remezo kigaragaza ko gishamikiyeho. Asobanura ko nta kirego remezo kiriho kuko ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane uwareze yashingiyeho ikirego cye asaba guhagarika irangizarubanza by'agateganyo cyatanzwe n'Urwego rw'Umuvunyi bityo we akaba atari umuburanyi muri rwo, ndetse n'uru Rwego rukaba rutari umuburanyi mu kirego cyihutirwa. Yatanze kandi indi nzitizi avuga ko hashingiwe ku ngingo ya 317, 320 na 322 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Urukiko rw'Ikirenga rudafite ububasha bwo gusuzuma ibirego byihutirwa kuko Umushingamategeko atigeze abiteganya kuko kubishyiraho byari kubuza umuburanyi umwe uburenganzi bwo kujurira kuko icyo kirego cyaba kiburanishijwe ku rwego rwa mbere mu Rukiko rw'Ikirenga.

Naho ku byerekeye imizi y'ikirego nyirizina, avuga ko ikirego cyatanzwe nabi kuko urega agaragaza ko icyo yaregeye nta kibazo agifiteho kubera ko irangiza ry'urubanza ririmo gukorwa n'uwashinzwe gushyira mu bikorwa izungura (liquidateur) aryemera ariko akaba yifuza gusa ko atagurisha. Akomeza avuga ko inzu iri Gikondo itari kugurishwa ndetse ko nta nzu yigeze igurishwa kuko Uwashinzwe gushyira mu bikorwa izungura akiri mu gihe cyo kumenya abazungura bose no kuzakorana nabo bikaba bitumvukana ukuntu urega we badakorana.

Me Hakizimana John Uhagarariye urega avuga ko ibyavuzwe n'abaregwa nta shingiro bifite kuko ikirego remezo gihari kandi ko ababuranyi muri uru rubanza rurebana n'ikirego cyihutirwa ari bamwe n'abo mu kirego remezo. Yongeraho kandi ko atari Urwego rw'Umuvunyi rwatanze icyo kirego remezo ahubwo ko hareze ababuranyi bari mu kirego cyihutirwa, bityo ikirego cyihutirwa kikaba gishamikiye neza ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane. Akomeza avuga ko iyo hari ikirego cy'iremezo, Urukiko rwose rushobora kuregerwa ikirego cyihutirwa hagamijwe gutabara ibyakononekara ndetse ko atari ubwa mbere Urukiko rw'Ikirenga ruburanisha ibirego byihutirwa kuko hari n'izindi manza ruburanisha ku rwego rwa mbere aho itegeko ritateganyijemo inzira z'ubujurire, bityo ko mu rubanza mbonezamubano, Umucamanza aramutse asanze ntacyo Umushingamategeko yabivuzeho "vide juridique", nta cyamubuza kugenekereza agendeye ku biteganywa n'amategeko birebana no gusubirishamo urubanza ingingo nshya.

Me Rusanganwa Jean-Bosco avuga ko GT Bank Ltd yarugobotsemo kugirango igaragaze gusa ko hari umwenda wayo ugomba kwitabwaho mu mitungo igomba kugabanywa.

Incamake y'icyemezo: 1. Kuba ikirego gisaba guhagarika irangizarubanza by'agateganyo ari ikirego kiburanishwa hakurikijwe imihango ijyanye n'iburanisha ry'ibirego byihutirwa,

bisobanura ko Umushingamategeko yashatse ko bene ibyo birego biba ibirego byihutirwa. Icyo kirego gishobora gutangwa mu Rukiko rw'ubujurire (ubujurire busanzwe: appel comme voie de recours ordinaire) igihe Urukiko rwa mbere rwemeje irangizwa ry'urubanza ry'agateganyo cyangwa imbere y'Urukiko ruburanisha ikirego cyo gutambamira urubanza rw'abandi ndetse n'imbere y'Urukiko ruburanisha ikirego cyo gusubirishamo urubanza ingingo nshya, ni ukuvuga mu gihe urubanza rujuririrwa mu nzira idasanzwe (voies de recours extraordinaires: la tierce opposition et le recours en révision) rwabaye itegeko.

2. N'ubwo ku byerekeye gusubirishamo urubanza ku mpamvu z'akaregane, nta kintu Umushingamategeko yavuze mu ngingo ya 85 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, kirebana no gusaba guhagarika by'agateganyo irangiza ry'urubanza rujuririrwa ariko hashingiwe ku ngingo ya 89 y'iryo Tegeko Ngenga, nta cyabuza ko ibiteganywa ku birebana n'inzira zo kujurira zidasanzwe ziteganywa mu Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi bikurikizwa no mu manza zirebana n'ibirego bigamije gusubirishamo urubanza ku mpamvu z'akarengane. Bityo umuburanyi watanze icyo kirego ashobora gusaba urukiko gutegeka mu buryo bwihutirwa ihagarikwa ry'irangizarubanza ry'agateganyo.

3. N'ubwo Urwego rw'Umuvunyi arirwo ruregera Urukiko rw'Ikirenga ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe ku rwego rwa nyuma, ariko igihe cyo kuburanisha bene ibyo birego, ababuranyi baguma ari ababuranye urubanza rusubirishwamo ku mpamvu z'akaregane ndetse ni nabo batanga imyanzuro yo kurega n'iyo kwiregura. Bityo ababuranyi mu rubanza rwihutirwa RC0005/15/CS ni nabo bari ababuranyi mu rubanza remezo RS/REV/INJUST/CIV0007/15/CS uretse Urwego rw'Umuvunyi rutari umuburanyi muri zo manza.

4. Kuba Urukiko rw'Ikirenga rufite ububasha bwo kuregerwa ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma, byumvikana nta gushidikanya ko, nk'Urukiko rwaregewe urubanza rw'iremezo rutaraburanishwa n'izindi nkiko, runafite ububasha bwo gusuzuma ibirego byihutirwa bishamikiye ku kirego cy'iremezo kiba cyarugejejweho.

5. Kuba abazungura bose batumvikana ku mitungo nyakwigendera yasize, kuba nanone bigaragara ko iyo mitungo yose ishobora kugurishwa igihe cyose gishoboka, Urukiko rw'Ikirenga rurasanga mu nyungu z'ubutabera ari ngombwa guhagarika irangiza ry'urubanza kuko irangiza ryarwo rishobora kononera bamwe mu bazungura ba nyakwigendera mu gihe baramuka batsinze urubanza yaregeye mu Rukiko rw'Ikirenga.

Inzitizi nta shingo zifite.
Ikirego cyihutirwa gifite ishingiro.
Amagarama aherereye ku baregwa.

Amategeko yashingiweho:

Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 85 n'iya 89.

Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 179, 190, 214(2°) n'iya 316.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Tariki ya 30/04/2010, Urukiko Rukuru rwaciye urubanza RCA0221/05/HC/KIG - RCA0221/09/HC/KIG, rwemeza ko abana bose ba Karimunda Gérard uko yababyaranye na Mukasharangabo Eugénie, Nyirakamana Marciana na Mukandori Epiphanie bagomba kuzungura ise nta vangura bakagabana umutungo wose uzabarurwa igihe cy'izungura, abitabye Imana bakazungurwa n'ababakomokaho.

[2] Nyirakamana Marciana yaje kwiyambaza Urwego rw'Umuvunyi kubera akarengane yavuze ko yahuye na ko muri urwo rubanza, maze tariki ya 05/11/2014, urwo rwego rw'Umuvunyi rwandikira Perezida w'Urukiko rw'Ikirenga rumusaba gusubirishamo urubanza rwavuzwe haruguru ku mpamvu z'akarengane.

[3] Hagati aho hari Umurangizazungura, Me Karambizi Canisius, wari urimo kurangiza urwo rubanza, mu byemezo yari ari gushyira mu bikorwa harimo no kugurisha umutungo wose kugira ngo abazungura bagabane amafaranga avuyemo.

[4] Ku wa 28/4/2015, Me Hakizimana John, uhagarariye Karangwa Denis, asaba Urukiko gufata icyemezo cy'agateganyo gihagarika irangizwa ry'urwo rubanza mu gihe isubirishamo ryarwo kubera akarengane ritarafatwaho icyemezo. Asobanura ko ubwihutirwe buhari ari uko iryo subirishamo ry'urubanza kubera akarengane rishobora kuzavamo icyemezo cy'Urukiko kivuguruzanya n'icyo bari kurangiza, bityo ibyazaba byamaze gukorwa bikaba imfabusa kandi harimo ibyamaze kugurishwa.

[5] Iburanisha mu ruhame ryabaye ku wa 22/6/2015, Karangwa Denis, Nyirakamana Marciana, Karigirwa Edinas, Kantamage Jacqueline na Centre Motors Parts Ltd baburanirwa na Me Hakizimana John, Mukasharangabo Eugénie, Mukashema Madeleine, Nyirashema Marie, abazungura ba Habimana Ildephonse (Shumbusho Fidèle na Habimana Nadine) baburanirwa na Me Nsabimana Jean-Baptiste, abazungura ba Bitwayiki Martin, aba Mukandekezi Alphonsine, aba Mukanoheli Mariana n'aba Ntahobari Nasson baburanirwa na Me Twayigize Jean-Claude, akanunganira Kalimunda Hakizimana Alphonse naho GT Bank Ltd (ex-Fina Bank Ltd) iburanirwa na Me Rusanganwa Jean-Bosco .

[6] Iburanisha ritangiye, Me Twayigize Jean-Claude yatanze inzitizi yo kutakira iki kirego cyihutirwa kuko kitari mu bwoko bw'ibirego byihutirwa, no kuba Urukiko rw'Ikirenga rudafite ububasha bwo kukiburanisha. Urukiko rw'Ikirenga rwafashe ku ntebe icyemezo cyo kuburanisha hamwe iyo nzitizi n'ikirego cyihutirwa mu mizi.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

A) **Kumenyana niba ikirego cyihutirwa cyatanzwe na Karangwa Denis kiri mu bwoko bw'ibirego byihutirwa.**

[7] Me Twayigize Jean-Claude avuga ko hashingiwe ku ngingo ya 316 y'Itegeko N°21/2012 ryo ku wa 16/07/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ikirego cyihutirwa cyatanzwe na Karangwa Denis kitari mu bwoko bw'ibirego byihutirwa kuko nta kirego remezo kigaragaza ko gishamikiyeho. Asobanura ko ikirego remezo kidahari kuko asaba ko irangiza rubanza

ryahagarara ashingiye ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane cyatanzwe n'Urwego rw'Umuvunyi, rutari umuburanyi bityo akaba asanga hashingiwe ku Itegeko hagombaga kuba harareze umuburanyi wenyine, akanasaba ko irangiza ry'urubanza riba rihagaze.

[8] Me Twayigize Jean-Claude akomeza avuga ko hashingiwe ku ngingo ya 85 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ikirego cyo gusubirishamo kivugwa n'urega, kitagirwa ikirego cyihutirwa (référé) kuko iteganya ko gusubirishamo urubanza ku mpamvu z'akarengane bidahagarika irangizarubanza, akaba asanga nta kirego kihutirwa gishobora gutangwa gikomotse ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, bityo icyo kirego cyihutirwa kikaba kidakwiye kwakirwa ngo gisuzumwe.

[9] Me Hakizimana John avuga ko ibyavuzwe n'abaregwa nta shingiro bifite kuko ikirego remezo gihari ndetse ko bamaze no kugikorera itegurwa ry'urubanza (mise en état). Asobanura ko ababuranyi muri uru rubanza rurebana n'ikirego cyihutirwa ari bamwe mu kirego remezo. Yongeraho kandi ko atari Urwego rw'Umuvunyi rwatanze icyo kirego remezo ahubwo ko hareze ababuranyi bari mu kirego cyihutirwa, bityo ikirego cyihutirwa kikaba gishamikiye neza ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane.

[10] Ku birebana n'ibiteganywa n'ingingo ya 85 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 ryavuzwe haruguru, Me Hakizimana John avuga ko batanze ikirego cyihutirwa bashingiye ku ngingo ya 316 y'Itegeko N°21/2012 ryo ku wa 16/07/2012 ryavuzwe haruguru aho iteganya ko iyo hari ikirego cy'iremezo cyatanzwe mu Rukiko ndetse hari n'ikibazo kigomba gukemurwa mu buryo bwihutirwa, hatangwa ikirego kihutirwa muri urwo Rukiko. Akomeza asobanura ko kuba ari urubanza mbonezamubano, Umucamanza aramutse asanze ntacyo Umushingamategeko yabivuzeho "vide juridique", nta cyamubuza kugenekereza (gukora "analogie"), agendeye ku biteganywa n'amategeko birebana no gusubirishamo urubanza ingingo nshya.

[11] Me Nsabimana Jean-Baptiste avuga ko yemeranywa na Me Twayigize Jean-Claude kuko ikirego cyihutirwa gishamikiye ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane cyatanzwe n'Urwego rw'Umuvunyi ndetse kigatangirwa amagarama. Asobanura ko ababuranyi batigeze batanga icyo kirego, bityo bakaba atari bamwe muri ibyo birego bibiri.

[12] Me Nsabimana Jean-Baptiste akomeza avuga ko ibivugwa mu ngingo ya 85 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 ryavuzwe haruguru ari ntakuka (impérative).

[13] Me Rusanganwa Jean-Bosco avuga ko Urukiko rw'Ikirenga rwakemuye ikibazo cyo kumenya ababuranyi mu birego byo gusubirishamo urubanza ku mpamvu z'akarengane aho rwemeje ko Urwego rw'Umuvunyi atarirwo ruregera Urukiko rw'Ikirenga kandi ko hashingiwe ku ngingo ya 80 n'iya 81 z'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 ryavuzwe haruguru, ari Perezida w'Urukiko rw'Ikirenga ufata icyemezo cyo kwandika icyo kirego mu bitabo by'Urukiko.

[14] Me Rusanganwa Jean-Bosco akomeza avuga ko gusubirishamo urubanza ku mpamvu z'akarengane bidahagarika irangizwa ry'urubanza, ariko ko asanga imanza zose zo gusubirishamo urubanza zijya gusa ku buryo abona ko muri uru rubanza, uru Rukiko rugomba gukurikiza ibiteganywa mu birego byo gusubirishamo urubanza ingingo nshya.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 89 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko "Ku bidateganyijwe n'iri Tegeko Ngenga birebana n'amategeko agenga imiburanishirize y'imanza imbere y'Urukiko rw'Ikirenga, hakurikizwa amategeko agenga imiburanishirize y'imanza mu nkiko zisanzwe".

[16] Ingingo ya 316 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara".

[17] Urukiko rw'Ikirenga rurasanga hashingiwe ku bivugwa mu ngingo ya 214, agace ka 2 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, byumvikana nta gushidikanya ko guhagarika irangizarubanza by'agateganyo ari ikirego kiburanishwa hakurikijwe imihango ijyanye n'iburanisha ry'ibirego byihutirwa, bisobanura ko Umushingamategeko yashatse ko bene ibyo birego biba ibirego byihutirwa. Rurasanga kandi icyo kirego gishobora gutangwa mu Rukiko rw'ubujurire (ubujurire busanzwe: appel comme voie de recours ordinaire) igihe Urukiko rwa mbere rwemeje irangizwa ry'urubanza ry'agateganyo cyangwa imbere y'Urukiko ruburanisha ikirego cyo gutambamira urubanza rw'abandi ndetse n'imbere y'Urukiko ruburanisha ikirego cyo gusubirishamo urubanza ingingo nshya, ni ukuvuga mu gihe urubanza rujuririrwa mu nzira idasanzwe (voies de recours extraordinaires: la tierce opposition et le recours en révision) rwabaye itegeko.

[18] Urukiko rw'Ikirenga rurasanga bene ibyo birego bitangwa mu gihe umuburanyi yatanze ikirego remezo cyangwa ikirego cy'ubujurire busanzwe (appel), cyangwa ikirego cyo gutambamira urubanza rw'abandi (tierce opposition) cyangwa se cyo gusubirishamo urubanza ingingo nshya (recours en révision).

[19] Urukiko rw'Ikirenga rurasanga Karangwa Denis yaratanze ikirego cyihutirwa kigamije gusaba guhagarika irangizwa ry'urubanza RCA0221/05/HC/KIG - RCA0221/09/HC/KIG mu gihe kugisubirishamo ku mpamvu z'akarengane bitararangira ndetse icyo kirego cyo gusubirishamo urwo rubanza ku mpamvu z'akarengane cyanditswe mu bitabo byabugenewe by'uru Rukiko kuri nomero RS/REV/INJUST/CIV0007/15/CS, ni ukuvuga ko ikirego cyihutirwa gifite nomero RC0005/15/CS gishamikiye ku kirego remezo RS/REV/INJUST/CIV 0007/15/CS.

[20] Urukiko rw'Ikirenga rurasanga rero mu gihe bigaragara ko urubanza RC0005/15/CS rurebana n'ikirego cyihutirwa gisaba guhagarika irangiza ry'agateganyo ry'urubanza RCA0221/05/HC/KIG - RCA0221/09/HC/KIG rushamikiye ku rubanza RS/REV/INJUST/CIV0007/15/CS rurebana no gusubirishamo urubanza RCA0221/05/HC/KIG - RCA0221/09/HC/KIG ku mpamvu z'akarengane, ibivugwa na Me Twayigize Jean-Claude bikaba bidakwiye guhabwa agaciro.

[21] Byongeye kandi kuba ku bushake bw'Umushingamategeko, ikirego gisaba ihagarikwa ry'irangizarubanza ry'agateganyo muri kamere yacyo ari ikirego cyihutirwa kigomba guhamagazwa nibura mu munsi ibiri (2) y'akazi, ndetse icyemezo cy'urukiko kigomba gufatwa mu gihe kitarenze amasaha mirongo ine n'umunani (48) uhereye igihe iburanisha

kuri icyo kibazo rirangiye, bityo, Urukiko rw'Ikirenga rurasanga ibivugwa na Me Twayigize Jean-Claude by'uko ikirego cyatanzwe na Karangwa Denis kitari ikirego cyihutirwa, bitagomba guhabwa agaciro.

[22] Urukiko rw'Ikirenga rurasanga n'ubwo ku byerekeye gusubirishamo urubanza ku mpamvu z'akaregane, nta kintu Umushingamategeko yavuze mu ngingo ya 85 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 ryavuzwe haruguru, kirebana no gusaba guhagarika irangiza ry'agateganyo ry'urubanza rujuririrwa ariko hashingiwe ku ngingo ya 89 y'iryo Tegeko Ngenga, nta cyabuza ko ibiteganywa ku birebana n'inzira zo kujurira zidasanzwe cyane cyane mu ngingo ya 179, ibice bya 5 na 6 n'iya 190 z'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, bikurikizwa mu manza zirebana n'ibirego bigamije gusubirishamo urubanza ku mpamvu z'akarengane, ni ukuvuga ko umuburanyi watanze icyo kirego ashobora gusaba urukiko gutegeka mu buryo bwihutirwa ihagarikwa ry'irangizarubanza ry'agateganyo.

[23] Usibye n'ibyo, n'ubwo Umushingamategeko atabiteganyije, bitabujijwe ko urega abisaba igihe abona ko abifitemo inyungu kuko Itegeko ritabibuza, bityo kubisaba bikaba bitabangamiye ibivugwa mu ngingo ya 85 y'Itegeko Ngenga ryavuzwe haruguru.

[24] Ku birebana n'ibivugwa na Me Twayigize Jean-Claude by'uko ikirego cyihutirwa cyatanzwe na Karangwa Denis kitagomba kwakirwa kuko ababuranyi bari muri uru rubanza atari bamwe n'abari mu rubanza remezo rurebana no gusubirishamo urubanza ku mpamvu z'akaregane, Urukiko rw'Ikirenga rurasanga n'ubwo Urwego rw'Umuvunyi arirwo ruregera uru Rukiko ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe ku rwego rwa nyuma, ariko ko igihe cyo kuburanisha bene ibyo birego, ababuranyi baguma uko baburanye urubanza rusubirishwamo ku mpamvu z'akaregane ndetse ko ari nabo batanga imyanzuro yo kurega n'iyo kwiregura, bityo ibivugwa na Me Twayigize Jean-Claude bikaba bitahabwa agaciro kuko ababuranyi mu rubanza rwihutirwa RC0005/15/CS aribo bari ababuranyi mu rubanza remezo RS/REV/INJUST/CIV0007/15/CS uretse Urwego rw'Umuvunyi rutari umuburanyi muri izo manza.

[25] Hashingiwe ku bimaze kuvugwa mu bika bibanziriza iki, Urukiko rw'Ikirenga rurasanga iyi nzitizi yatanzwe na Me Twayigize Jean-Claude yo kutakira ikirego cyihutirwa nta shingiro ifite.

B) Kumenyana niba Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha ibirego byihutirwa.

[26] Me Twayigize Jean-Claude avuga ko hashingiwe ku ngingo ya 317, 320 na 322 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Urukiko rw'Ikirenga rudafite ububasha bwo gusuzuma ibirego byihutirwa kuko Umushingamategeko atigeze abiteganya.

[27] Me Twayigize Jean-Claude asobanura ko kuba atarabiteganyije atari uko habayeho kwibeshya ahubwo ari uko iyo biza kubaho, umuburanyi umwe yashoboraga kubuzwa uburenganzira bwo kujurira kuko nta handi yajuririra, mu gihe ikirego cyihutirwa (référé) cyaba cyaburanishijwe ku rwego rwa mbere mu Rukiko rw'Ikirenga. Asoza avuga ko nta ngingo n'imwe y'amategeko yemerera Urukiko rw'Ikirenga kwakira ikirego cyihutirwa mu rwego rwa mbere ndetse hashingiwe ku ngingo ya 317 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, Urukiko rw'Ikirenga rutari mu Nkiko zemerewe kuregerwamo ibirego byihutirwa.

[28] Me Hakizimana John avuga ko iyo hari ikirego cy'iremezo, Urukiko rwose rushobora kuregerwa ikirego cyihutirwa hagamijwe gutabara ibyakononekara. Akomeza avuga ko atari ubwa mbere Urukiko rw'Ikirenga ruburanisha ibirego byihutirwa ndetse ko hari n'izindi manza ruburanisha ku rwego rwa mbere aho itegeko ritateganyijemo inzira z'ubujurire (voie de recours). Asoza avuga ko mu gihe Urukiko rw'Ikirenga rufata icyemezo cy'agateganyo ku kirego cyihutirwa, ntacyo bitwaye kuko hari n'icyemezo kiba kizava mu rubanza ku kirego cy'iremezo.

[29] Me Rusanganwa Jean-Bosco avuga ko itegeko ryatanze urutonde rw'Inkiko zitangwamo ibirego byihutirwa ariko ko Urukiko rw'Ikirenga rutarimo, cyakora ko asanga mu gukemura iki kibazo, uru Rukiko rugomba gukurikiza umurongo watanzwe n'ingingo ya 6 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru.

UKO URUKIKO RUBIBONA

[30] Ingingo ya 317, agace ka 1 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru iteganya ko "Perezida w'Urukiko rw'Ibanze cyangwa undi mucamanza wabiherewe ububasha yumva ibirego byihutirwa biboneka mu manza ziri mu bubasha bw'urwo Rukiko bakanabifatira umwanzuro". Agace kayo ka 2 gateganya ko "Perezida w'Urukiko Rwisumbuye cyangwa undi mucamanza wabiherewe ububasha yumva ibirego byihutirwa biboneka mu manza ziri mu bubasha bw'urwo Rukiko bakanabifatira umwanzuro". Naho agace kayo ka 3 gateganya ko "Perezida w'Urukiko Rukuru na Perezida w'Urukiko Rukuru rw'Ubucuruzi cyangwa undi mucamanza wabiherewe ububasha yumva ibirego byihutirwa biboneka mu manza ziri mu bubasha bw'urwo Rukiko bakanabifatira umwanzuro".

[31] Urukiko rw'Ikirenga rurasanga kuba mu ngingo ya 317 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, hatavugwamo Urukiko rw'Ikirenga, ari uko ububasha n'imikorere yarwo bigengwa n'Itegeko Ngenga ryarwo ryihariye, bikaba byumvikana ko ibijyanye n'ububasha buvugwa muri iyo ngingo bireba inkiko zo hasi yarwo (*Urukiko rw'Ibanze, Urukiko Rwisumbuye n'Urukiko Rukuru).* Rurasanga ariko hashingiwe ku ngingo ya 89 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/6/2012 ryavuzwe haruguru, ibiteganywa n'ingingo ya 316 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru bigomba gukurikizwa n'imbere y'Urukiko rw'Ikirenga.

[32] Urukiko rw'Ikirenga rurasanga nk'uko bivugwa mu ngingo ya 78 y'Itegeko Ngenga N°03/2012 ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, Urukiko rw'Ikirenga ari rwo ruburanisha ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma.

[33] Urukiko rurasanga rero nk'uko byasobanuye haruguru, kuba uru Rukiko rufite ububasha bwo kuregerwa ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma, byumvikana nta gushidikanya ko, nk'Urukiko rwaregewe urubanza rw'iremezo rutaraburanishwa n'izindi nkiko, runafite ububasha bwo gusuzuma ibirego byihutirwa bishamikiye ku kirego cy'iremezo kiba cyarugejejweho.

[34] Urukiko rw'Ikirenga rurasanga kuba Umushingamategeko yarashatse ko ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma biburanishwa bwa mbere n'ubwa nyuma n'uru Rukiko, bitabuza ko ababuranyi batanga ibirego byihutirwa, kuko ikirego cyihutirwa kigamije gusa gusaba urukiko gufata icyemezo cy'agateganyo mu gihe urubanza remezo rutaraburanishwa kandi gishobora

kuvanwaho n'icyemezo kizafatwa mu mizi y'urubanza. Byongeye kandi kuba icyemezo cyihutirwa gishobora gufatwa n'Urukiko rw'Ikirenga kitajuririrwa kubera ibyemezo byarwo bitajuririrwa, atari impamvu ishimangira ko uru rukiko rudafite ububasha bwo kuburanisha ibirego byihutirwa.

[35] Hashingiwe ku bimaze kuvugwa, iyi nzitizi yatanzwe na Me Twayigize Jean-Claude yo kutakira ikirego cyihutirwa cya Karangwa Denis ikaba nta shingiro ifite.

C) Kumenya niba irangiza ry'urubanza RCA0221/05/HC/KIG - RCA0221/09/HC/KIG ryaba rihagaritswe by'agateganyo mu gihe kurusubirishamo kubera impamvu z'akarengane bitaraburanishwa.

[36] Me Hakizimana John avuga ko Karangwa Denis asaba Urukiko gufata icyemezo cy'agateganyo gihagarika irangizwa ry'urwo rubanza mu gihe isubirishamo ryarwo ku mpamvu z'akarengane ritarafatwaho icyemezo. Asobanura ko ubwihutirwe buhari ari uko iryo subirishamo ry'urubanza rishobora kuzavamo icyemezo cy'Urukiko kivuguruzanya n'icyo bari kurangiza, bityo ibyazaba byamaze gukorwa bikaba impfabusa kandi harimo ibyamaze kugurishwa.

[37] Me Hakizimana John avuga kandi ko hari inyandiko-mvugo y'inama y'abazungura yabaye hagati ya bamwe kuko hari ubwumvikane buke hagati yabo, igaragaza mu ngingo zayo za 3 na 6 ko inzu iri Gikondo n'indi mitungo itimukanwa bigomba kugurishwa hanyuma bakagabana amafaranga.

[38] Me Twagiyize Jean-Claude avuga ko icyo kirego cyatanzwe nabi kuko agaragaza ko icyo yaregeye nta kibazo agifiteho kubera ko irangiza ry'urubanza ririmo gukorwa n'umurangiza zungura (liquidateur) aryemera ariko akaba yifuza ko atagurisha. Akomeza avuga ko inzu iri Gikondo itari kugurishwa ndetse ko nta nzu yigeze igurishwa kuko umurangiza zungura akiri mu gihe cyo kumenya abazungura bose. Asoza avuga ko umurangiza zungura akorana n'abazungura mu buryo batabona impamvu ituma badakorana nawe.

[39] Me Nsabimana Jean-Baptiste avuga ko urwo rubanza rwaciwe mu mwaka wa 2010, rutegeka ko umutungo wose ugabanwa hagati y'abazungura bose. Akomeza avuga ko Karangwa Denis yari yarishimiye icyo cyemezo ariko ubu agatanga iki kirego, bityo akaba asanga nta bwihutirwe buri muri uru rubanza.

[40] Me Rusanganwa Jean-Bosco avuga ko GT Bank Ltd igaragaza gusa ko hari umwenda wayo mu mitungo igomba kugabanywa.

UKO URUKIKO RUBIBONA

[41] Urukiko rw'Ikirenga rurasanga bigaragara mu ngingo ya 3 y'inyandiko-mvugo y'inama y'abazungura ba nyakwigendera Kalimunda Gérard yateranye ku wa 25/7/2014 ko abitabiriye iyo nama bemeje ko gucungira umutungo hamwe, harimo n'inzu y'ububiko iri Gikondo ituzuye, bidashoboka kuko abazungura batumvikana, bityo bakaba barafashe icyemezo cy'uko hatangira uburyo bwo kugurisha umutungo wose ukagabanywa abazungura.

[42] Hashingiwe ku byavuzwe mu gika kibanziriza iki, Urukiko rw'Ikirenga rurasanga mu gihe abazungura bose batumvikana ku mitungo nyakwigendera Kalimunda Gérard yasize ndetse bamwe bavuga ko ari imitungo nyakwigendera yabahaye mbere y'uko yitaba Imana

itagomba kuba mu rutonde rw'ibyo yasize, icyo kibazo kikaba n'impamvu yatumye bavuga ko habaye akarengane mu rubanza RCA0221/05/HC/KIG - RCA0221/09/HC/KIG, kuba nanone bigaragara ko iyo mitungo yose ishobora kugurishwa igihe cyose gishoboka, Urukiko rw'Ikirenga rurasanga mu nyungu z'ubutabera ari ngombwa guhagarika irangiza ry'urubanza rwavuzwe haruguru kuko irangiza ryarwo rishobora kononera bamwe mu bazungura ba nyakwigendera mu gihe baramuka batsinze urubanza yaregeye mu Rukiko rw'Ikirenga.

[43] Hashingiwe kuri ibyo bisobanuro, Urukiko rw'Ikirenga rurasanga ikirego cya Karangwa Denis gifite ishingiro, bityo irangizarubanza rikaba rigomba guhagarara mu gihe urubanza mu mizi rutaracibwa n'uru Rukiko, hagategerezwa icyemezo Urukiko ruzafata urubanza rurangije gucibwa mu mizi yarwo.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko inzitizi zatanzwe na Kalimunda Hakizimana Alphonse n'abazungura ba Bitwayiki Martin, ba Mukandekezi Alphonsine, ba Mukanoheli Mariana, ba Ntahobari Nasson baburanirwa na Me Twayigize Jean-Claude nta shingiro zifite.

[45] Rwemeje ko ikirego cyihutirwa cyatanzwe na Karangwa Denis gifite ishingiro.

[46] Rutegetse ko irangizarubanza ry'urubanza RCA0221/05/HC/KIG - RCA0221/09/HC/KIG riba rihagaze hagategerezwa ikiza ry'urubanza RS/REV/INJUST/CIV0007/15/CS.

[47] Rutegetse Kalimunda Hakizimana Alphonse n'abazungura ba Bitwayiki Martin, aba Mukandekezi Alphonsine, aba Mukanoheli Mariana, aba Ntahobari Nasson kwishyura amagarama ry'urubanza angana na 100.000Frw.