

UBUSHINJACYAHA v. HAKIZIMANA

[Rwanda URUKIKO RW'IKIRENGA – RPA0002/GEN/13/CS (Kayitesi Z., P.J., Nyirinkwaya na Mukamulisa, J.) 11 Ugushyingo 2013]

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Ubujurire – Kujuririra icyemezo cy'urukiko cyemeza ko rufite ububasha bwo kuburanisha urubanza – Umuburanyi utishimiye icyo cyemezo akijuririra hamwe n'urubanza mu mizi – Itegeko- Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo za 90(2) na 18(6) – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 162(2).

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Ubujurire – Kujuririra urubanza rwasubirishijwemo ingingo nshya – Urubanza rwasubirishijwemo ingingo nshya ntirujuririrwa n'ubwo rwaba rwaraciwe ku rwego rwa mbere – Itegeko- Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 34(11) – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 193.

Incamake y'ikibazo: Mu Rukiko rwa Mbere rw'Iremezo rwa Kigali, urugereko rwhariye ruburanisha imanza z'ibyaha by'itsembabwoko n'itsembatsemba n'ibyaha byibasiye inyokomuntu n'ibindi byaha bifatanye isano, Hakizimana Augustin yahamijwe icyaha cya jenocide, icyaha cy'ubuhotozi no kurema umutwe w'abagizi ba nabi. Yahanishijwe kwicwa no kwishyura indishyi z'akababaro zingana na 10.000.000Frw.

Yajuririye mu Rukiko rw'Ubujurire rwa Kigali rwemeza ko ikirego cye nta shingiro gifite. Yasabye ko urwo rubanza ruseswa mu Rukiko Rusesa Imanza. Nyuma y'ivugurura ry'Inzego z'Ubucamanza, ikirego cye cyaburanishijwe n'Urukiko rw'Ikirenga nticyakirwa kuko cyari cyaje mu nzira zinyuranyije n'amategeko.

Hakizimana Augustin yasubirishijemo urubanza ingingo nshya mu Rukiko Rwisumbuye rwa Gasabo avuga ko nyuma yo gucirirwa urubanza hari abantu bagaragaye ko bakiriho n'abandi bapfuye nyuma ya Jenocide ndetse akaba hari abantu yahamijwe ko yishe kandi hari abantu Inkiko Gacaca zahamije urupfu rw'abo bantu kandi ababahamijwe bakaba baratamushinje. Yanavugaga ko hari abatangabuhamya bamushinjura ko nta ruhare yagize muri Jenocide. Urukiko Rwisumbuye rwa Gasabo rwemeje ko ikirego cye gifite ishingiro kuri bimwe ariko ingingo yatanze zerekeye imanza zaciwe n'Inkiko Gacaca n'ubuhamya bw'abantu batandukanye zimuhana guraho urupfu rw'abantu batandukanye zo ntizahabwa ishingiro.

Yajuririye urwo rubanza mu Rukiko Rukuru, Ubushinjacyaha bubyutsa inzitizi y'iburabubasha buvuga ko urubanza rwasubirishijwemo ingingo nshya rutajuririrwa. Rwemeje ko iyo nzitizi nta shingiro ifite. Nyuma Urukiko Rukuru rwamuhanyaguyeho ibyaha aregwa rutegeka ko ahita arekurwa.

Ubushinjacyaha bwajuririye urwo rubanza mu Rukiko rw'Ikirenga buvuga ko urubanza rwasubirishijwemo ingingo nshya rutajuririrwa.

Abahagarariye ushinjwa batanze inzitizi yo kutakira ikirego ngo kuko Ubushinjacyaha butemerewe kujurira *à titre principal* icyemezo cy'urukiko cyemeza ko rufite ububasha bwo kuburanisha urubanza.

Ubushinjacyaha bwo buvuga ko iyo nzitizi nta shingiro ifite kuko ingingo zerekeye imiburanishirize y'imanza z'imbonezamubano ababuranira ushinjwa bavuga zitabuza kujuririra iburabubasha, ahubwo zisobanura ko iyo urukiko rwemeje ko rufite ububasha, icyo cyemezo kijuririrwa hamwe n'urubanza mu mizi.

Incamake y'icyemezo: 1. Iyo Urukiko rwemeje ko rufite ububasha bwo kuburanisha, umuburanyi utishimiye icyo cyemezo akijuririra hamwe n'urubanza mu mizi. Ikibujijwe ni ukukijuririra urubanza mu mizi rutaracibwa.

2. Imanza zasubirishijwemo ingingo nshya ntizijuririrwa kuko gusubirishamo urubanza ingingo nshya ari uburyo budasanze buha umucamanza kwisubiraho iyo habonetse impamvu mu zo itegeko riteganyaga igaragaza ko urubanza rwari gucibwa mu bundi buryo iyo ruburanishwa iyo mpamvu izwi. Gusa ntibugamije kongera gufungura ubujurire bwangiyeye ku rubanza rwaciye burundu kuko urubanza rusubirishijwemo rufata kamere y'urwo rusimbuye. Bivuze ko rudashobora kongera kujuririrwa n'ubwo rwaba rwaciye ku rwego rwa mbere.

3. Ku byerekeranye no kwita ku kuri nk'uko bigenda muri Common Law nta shingiro byahabwa kuko uretse no kuba batirengagiza izindi manza zaciye n'amategeko akurikizwa, ikibazo gisuzumwa muri uru rubanza ntaho gihuriye no kumenya niba uregwa ahamwa n'icyaha cyangwa kitamuhama; ahubwo igisuzumwa ni ububasha bw'Urukiko Rukuru.

Ubujurire bufite ishingiro.

Urukiko Rukuru ntirwari rufite ububasha.

Urubanza RPA/GEN/0001/12/HC/KIG ruteshejwe agaciro.

Amagarama y'urubanza aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko- Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo za 18, 34 na 90.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 162 na 193.

Imanza zifashishijwe:

Nzabandora v. Leta y'u Rwanda, RADA0026/10/CS, Rwaciye n'Urukiko rw'Ikirenga kuwa 4 Werurwe 2011.

Mulemba v Kabona, RCAA0065/09/CS, Rwaciye n'Urukiko rw'Ikirenga, kuwa 2 Nyakanga 2010.

Nzabamwita v SONARWA, RCOMA001/06/CS, Rwaciye n'Urukiko rw'Ikirenga kuwa 2 Gashyantare 2007.

Ubushinjacyaha v. Rwahama, RS/REV/GEN0005/07/CS, rwaciye n'Urukiko rw'Ikirenga kuwa 24 Nyakanga 2009.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Hakizimana Augustin yahamijwe ibyaha byavuzwe haruguru usibye icyo kuyogoza igihugu mu rubanza RP209/CSK rwo kuwa 06/04/2001 rwaciye n'Urukiko rwa Mbere

rw'Iremezo rwa Kigali, urugereko rwihariye ruburanisha imanza z'ibyaha by'itsembabwoko n'itsembatsemba n'ibyaha byibasiye inyoko-muntu n'ibindi byaha bifitanye isano, ahanishwa igihano cyo kwicwa, ategukwa no gutanga indishyi z'akababaro za 10.000.000Frw ku bangirijwe n'ubwicanyi yakoze.

[2] Hakizimana yajuririyeye urwo rubanza mu Rukiko rw'Ubujurire rwa Kigali, rwemeza ko ubujurire bwe nta shingiro bufite. Urwo rubanza yarusabiye iseswa mu Rukiko Rusesa Imanza, nyuma y'ivugururwa ry'inzego z'ubucamanza ikirego cye kiburanishwa n'Urukiko rw'Ikirenga ruvuguruwe, rwemeza ko ikirego cye kitakiriwe kuko cyaje mu nzira zidakurikije amategekoko.

[3] Hakizimana yasubirishijemo ingingo nshya urubanza RP209/CSK mu Rukiko Rwisumbuye rwa Gasabo, avuga ko nyuma yo gucibwa urubanza hari abantu byagaragaye ko bakiriho n'abandi bapfuye nyuma ya jenocide kandi yarahaniwe ko yabishe muri jenocide. Yavugaga kandi ko hari abo yahamijwe ko yishe nyamara Inkiko Gacaca zarahamije abandi bantu icyaha cyo kwica abo bantu, abo bantu bakaba bataramushinje ko bafatanyije. Yanavugaga ko hari n'abatangabuhamya bamushinjura ko nta ruhare yagize muri jenocide.

[4] Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza RP/GEN0001/10/TGI/GSBO kuwa 02/02/2012, rwemeza ko ikirego cya Hakizimana gifite ishingiro ku byerekeye umugore wa Célestin yashinjwaga ko yishe kandi yarapfuye urupfu rusanze nyuma ya jenocide, na Ndayisenga Bernard ukiriho. Rwemeje ariko ko izindi ngingo yatanze zishingiye ku manza zaciye n'inkiko gacaca zo mu murenge wa Kacyiru, n'ubuhamya bw'abantu batandukanye zimuhanaguraho urupfu rw'abandi bantu ashinjwa ko yagize uruhare mu rupfu rwabo nta shingiro zifite.

[5] Hakizimana yajuririyeye urwo rubanza mu Rukiko Rukuru. Ubushinjacyaha bubyutsa inzitizi y'iburabubasha buvuga ko urubanza rwasubirishijwemo ingingo nshya rutajuririrwa, urukiko rwemeza mu rubanza rubanziriza urundi rwo kuwa 08/02/2013 ko iyo nzitizi nta shingiro ifite.

[6] Rwasobanuye ko urubanza rwasubirishijwemo ingingo nshya rujuririrwa rwaciye n'Urukiko Rwisumbuye rwa Gasabo ku rwego rwa mbere kuko rwafashe kamere y'urwa mbere rwaciye ku rwego rwa mbere, ko rero nta cyarubaza kujuririrwa mu Rukiko Rukuru kuko itegeko rigena imiterere, imikorere n'ububasha by'inkiko riha Urukiko Rukuru ububasha bwo kuburanisha mu bujurire imanza zaciye n'Urukiko Rwisumbuye ku rwego rwa mbere.

[7] Ku bijyanye n'imanza Ubushinjacyaha bwari bwatanze nk'ikimenyetso cy'uko urubanza ruciye ku kirego cyo gusubirishamo urubanza ingingo nshya rutajuririrwa hagendewe ku murongo watanze n'Urukiko rw'Ikirenga, rwavuze ko zitakwifashishwa muri uru rubanza kuko atari imanza z'inshinjabyaha, zikaba zaraciye ku rwego rwa nyuma, ku buryo nta handi zajuririrwa, ibyo bikaba bitandukanye n'uru rubanza rwaciye ku rwego rwa mbere.

[8] Rwavuze kandi ko ingingo ya 193 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibuza kujuririra urubanza rwasubirishijwemo ingingo nshya, itashingirwaho muri uru rubanza kuko ikurikizwa mu manza nshinjabyaha iyo nta tegeko ryihariye rihari, akaba atariko bimeze muri uru rubanza kuko ibyo gusubirishamo urubanza ingingo nshya biteganyijwe mu ngingo za 180 kugeza ku ya 183 z'Itegeko N°13/2004 ryo kuwa 17/05/2004

ryerekeye imiburanishirize y'ianza z'ishinjabyaha, ndetse ibyerekeranye n'ubujurire bw'izo manza bikaba biteganyijwe muri rusange mu itegeko rigena imiterere, imikorere n'ububasha by'inkiko ivuga ko imanza z'inshinjabyaha ziciwe ku rwego rwa mbere n'Urukiko Rwisumbuye zijurirwa mu Rukiko Rukuru.

[9] Nyuma y'urwo rubanza rubanziriza urundi, urubanza rwaburanishijwe mu mizi, urukiko ruca urubanza kuwa 21/06/2013, rwemeza ko Hakizimana agizwe umwere ku byaha byose aregwa, rutegeka ko ahita afungurwa.

[10] Ubushinjacyaha bwajuririye urwo rubanza mu Rukiko rw'Ikirenga kuwa 12/07/2013, buvuga ko Urukiko Rukuru rwirengagije ko ntaho biteganyijwe mu mategeko ko urubanza rwasubirishijwemo ingingo nshya rujurirwa.

[11] Urubanza rwaburanishijwe mu ruhamwe kuwa 07/10/2013, Hakizimana yunganiwe na Me Murinzi Jean de Dieu, Me Mutarindwa Félix na Me Protais Mutembe, naho Ubushinjacyaha buhagarariwe na PN Ruberwa Bonaventure.

II. ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA

A. Kumenya niba ubujurire bw'Ubushinjacyaha butagomba kwakirwa.

[12] Abunganira Hakizimana batanze inzitizi yo kutakira ikirego cy'Ubushinjacyaha bavuga ko butemerewe kujurira *à titre principal* icyemezo cy'urukiko cyemeza ko rufite ububasha bwo kuburanisha urubanza, ndetse ko ikirego cyabwo kitagombaga kwandikwa mu gitabo cy'ibirego, bakaba basaba uru rukiko gukosora ikosa ryakozwe n'Umwanditsi Mukuru w'Urukiko rw'Ikirenga.

[13] Basobanura ko iyo nzitizi bayishingira ku ngingo ya 18 n'iya 90 z'Itegeko ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu.

[14] Ubushinjacyaha buvuga ko iyo nzitizi nta shingiro ifite kuko ntaho ziriya ngingo z'itegeko ryerekeye imiburanishirize y'ianza z'imbonezamubano zibuza kujuririra iburububasha, ahubwo zisobanura ko iyo urukiko rwemeje ko rufite ububasha, icyo cyemezo kijurirwa hamwe n'urubanza mu mizi, bivuze ko ikibujijwe ari ukujuririra urubanza rubanziriza urundi rwemeje ko urukiko rufite ububasha, mbere y'uko urubanza mu mizi rucibwa.

[15] Ubushinjacyaha buvuga kandi ko n'ingingo ya 28 y'Itegeko - Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga nayo ishimangira ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha imanza zaciwe n'Urukiko Rukuru mu rwego rw'ubujurire iyo izo manza zaciwe n'urukiko rutabifitiye ububasha.

[16] Ingingo ya 90(2) y'itegeko ryavuzwe ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ivuga ko "iyu urukiko rwemeje ko rufite ububasha, umuburanyi utishimiye icyo cyemezo akijuririra hamwe n'urubanza rw'iremezo", naho iya 18 (6) y'iryo tegeko irebana n'ibirego Umwanditsi w'Urukiko adashobora kwakira ngo abyandike mu bitabo by'Urukiko, ikavuga ko atakira "ubujurire ku cyemezo cy'urukiko rwemeza ko rufite ububasha bwo kuburanisha".

[17] Urukiko rusanga ingingo ya 90(2) itabuza kujuririra icyemezo cy'urukiko cyemeza ko rufite ububasha bwo kuburanisha urubanza, ahubwo icyo ibuza ari ukukijuririra cyonyine, hadategerejwe icyemezo cyarwo ku birebana n'urubanza mu mizi.

[18] Ku bijyanye n'ingingo ya 18(6) Urukiko rusanga iyo irebewe hamwe n'ya 90(2) yumvikanisha ko ikirego Umwanditsi w'Urukiko abujijwe kwakira ari ubujurire ku cyemezo cy'urukiko rwemeje ko rufite ububasha kije urubanza mu mizi rutaracibwa.

[19] Urukiko rusanga kandi abunganira Hakizimana mu isesengura bakora ry'ingingo za 18(6) na 90(2) birengagiza ko impamvu ituma icyo cyemezo cy'ububasha kigomba kujuririrwa hamwe n'urubanza mu mizi ari uko kiri mu rwego rw'imanza zibanziriza izindi, ingingo ya 162(2) y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano ikaba ivuga ko kujuririra imanza zibanziriza izindi bikorwa gusa iyo urubanza rw'iremezo rwaciwe kandi bigakorerwa rimwe.

[20] Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga inzitizi yo kutakira ikirego yatanzwe n'abunganira Hakizimana Augustin nta shingiro ifite, hakaba hagomba gusuzumwa ubujurire bwatanzwe n'Ubushinjacyaha.

B. Kumenya niba Urukiko Rukuru rutari rufite ububasha bwo kwakira ubujurire ku rubanza Hakizimana yasubirishijemo ingingo nshya mu Rukiko Rwisumbuye rwa Gasabo.

[21] Ubushinjacyaha buvuga ko urubanza rwaciwe n'Urukiko Rukuru rukwiye guteshwa agaciro kuko ntaho biteganyijwe ko urubanza rwasubirishijwemo ingingo nshya rujuririrwa.

[22] Busobanura ko mu rubanza RS/REV/GEN0005/07/CS bwaregagamo Rwahama Anaclet, Urukiko rw'Ikirenga rwasobanuye neza ko urubanza rusubirishijwemo ingingo nshya rufata kamere y'urwasubirishijwemo, bityo narwo rukaba ruhita ruba itegeko ntirube rucyongeye kujuririrwa, ndetse ko hari n'izindi manza nyinshi zashimangiye uwo murongo nka RADA0026/10/CS (Nzabandora Alex Vs Leta y'u Rwanda), RCAA0065/09/CS (Mulemba Vs Kabona Justin) na RCOMA001/06/CS (Nzabamwita Emmanuel Vs SONARWA), Urukiko Rukuru rukaba rwaragombaga kugendera muri uyu murongo kuko ibyemezo by'Urukiko rw'Ikirenga bigomba kubahirizwa n'izindi nkiko.

[23] Buvuga kandi ko n'ubwo itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryariho igihe urubanza rwacibwaga mu Rukiko Rukuru ntacyo ryavugaga ku byerekeye ubujurire bw'imanza zasubirishijwemo ingingo nshya, Urukiko rukuru rwari no gushingira ku Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ivuga mu ngingo yaryo ya 192 ko icyemezo cyafashwe mu gusubirishamo urubanza ingingo nshya kitemera inzira z'ubujurire izo arizo zose.

[24] Abunganira uregwa bavuga ko ingingo ya 192 Ubushinjacyaha buburanisha ntaho ihuriye n'ibyo aburanisha kuko ivuga gusa ko gusubirishamo urubanza ingingo nshya bidashoboka iyo urwo rubanza rwigeze gusubirishwamo ingingo nshya "révision sur révision ne vaut".

[25] Bavuga kandi ko ingingo ya 373(3) y'Itegeko N°21/2012 ryo kuwa 14/06/2012 rigenga imiburanishirize y'imanza z'imbonezamubano, ivuga ko iryo tegeko ridakurikizwa iyo ribangamiye uburenganzira bw'umuburanyi yari afite mbere y'uko rijyaho, ko rero Urukiko rutagomba gushingira kuri iryo tegeko kuko ryaba rirenganya Hakizimana.

[26] Ku bijyanye n’imanza zatanzwe n’Ubushinjacyaha mu rwego rwo gusobanura ikirego cyabwo, bavuze ko ntaho zihuriye n’urubanza rwa Hakizimana kuko zo zari zaraburanishijwe ku rwego rwa nyuma, mu gihe uru rwaburanishijwe ku rwego rwa mbere, hakaba nta cyabuza ko rujuririrwa.

[27] Bavuga kandi ko Urukiko rw’Ikirenga nk’urukiko rukuriye izindi, rwazanashingira ku kuri rukarenganura Hakizimana bitabaye ngombwa gutsimbarara ku bintu byanditse kandi umuntu arengana, ngo kuko ariko bigenda muri “common law” kandi n’u Rwanda rukaba ariho ruri kwerekeza.

UKO URUKIKO RUBIBONA

[28] Urukiko rw’Ikirenga mu manza nyinshi¹ zaciwe hagikurikizwa Itegeko N°13/2004 ryagengaga imiburanishirize y’imanza z’inshinjabyaha n’Itegeko N°18/2004 ryo kuwa 20/06/2004 ryagengaga imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsu rwasobanuye ko nubwo ayo mategeko atabisobanuraga mu buryo bweruye, imanza zasubirishijwemo ingingo nshya zitajuririrwa kubera ko “révision” ari uburyo budasanze buha umucamanza inzira yo kwisubiraho (rétractation) iyo habonetse impamvu mu zo itegeko riteganywa, igaragaza ko urubanza rwari gucibwa mu bundi buryo iyo ruburanishijwe iyo mpamvu izwi, ariko ko butagamije kongera gufungura ubujurire bwarangiye ku rubanza rwaciwe burundu kuko urubanza rusubirishijwemo rufata kamere y’urwo rusimbuye, narwo ruba rwaraciwe burundu.

[29] Urukiko rusanga ibyo Urukiko Rukuru rwavuze ko umurongo watanzwe n’Urukiko rw’Ikirenga warebaga gusa imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsu nta shingiro bifite kuko hari imanza z’inshinjabyaha zaciwe kuri icyo kibazo, urugero akaba ari urubanza Ubushinjacyaha bwaregagamo Rwahama Anaclét rwaciwe kuwa 24/07/2009² rwasobanuyemo ko nta rukiko itegeko ngenga rigena imiterere, imikorere n’ububasha by’inkiko rwahaye ububasha bwo kujuririrwa imanza zasubirishijwemo ingingo nshya. Ikindi kandi nta mpamvu ishingiyeye ku mategeko yari gutuma hemezwa ko imanza z’inshinjabyaha zasubirishijwemo ingingo nshya zishobora kujuririrwa, mu gihe nyamara bidashoboka ko imanza z’imbenezamubano zisubirishijwemo ingingo nshya zijuririrwa.

[30] Urukiko rusanga n’ibyo Urukiko Rukuru rwavuze ko umurongo watanzwe n’Urukiko rw’Ikirenga warebaga gusa imanza zaciwe ku rwego rwa nyuma ntaho bishingiyeye kuko n’ubundi imanza zaciwe ku rwego rwa nyuma ziba zitagishobora kujuririrwa mu nzira zisanze.

[31] Urukiko rusanga kandi imanza zaciwe burundu ziba zinganya uburemere hatitawe ku rwego zarangiriyeho kuko urubanza ruciwe ku rwego rwa mbere ntirujuririrwe, cyangwa rukajuririrwa ariko ubujurire ntibwakirwe rurangizwa kimwe n’urwaciwe ku rwego rwa nyuma, kuba rero urubanza rusubirishijwemo ingingo nshya rufata kamere y’urwo rusimbuye, ibyo byumvikanisha ko rudashobora kongera kujuririrwa nubwo rwaba rwaraciwe ku rwego rwa mbere kuko n’urwo rusimbuye rwari rwarangije kuba itegeko.

[32] Urukiko rusanga umurongo rwafashe ku bijyanye n’ubujurire bw’imanza zasubirishijwemo ingingo nshya waraje no gushimangirwa n’Itegeko N°21/2012 ryo kuwa

¹ RADA 0026/10/CS (Nzabandora v. Leta y’u Rwanda), RCAA0065/09/CS (Mulemba Vs Kabona Justin), RCOMA 001/06/CS (Nzabamwita Emmanuel v. SONARWA).

² RS/REV/GEN0005/07/CS (MP v. Rwahama Anaclét).

14/06/2012 rigenga imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi ryasohotse mu igazeti ya Leta mbere y’uko Urukiko Rukuru rufata icyemezo cyarwo, ivuga mu ngingo yaryo ya 193 ko icyemezo gifashwe mu gusubirishamo urubanza ingingo nshya nta na rimwe kijurirwa cyangwa ngo gisubirwemo, ibi nabyo bikaba byumvikanisha ko urubanza rwasubirishijwemo ingingo nshya ruba ruciwe burundu nk’urwo rusumbuye.

[33] Urukiko rusanga nanone uwo murongo waraje no gushimangirwa n’Itegeko-Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigenga imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga ryasohotse mu igazeti ya Leta kuwa 09/07/2012 mbere y’uko Urukiko Rukuru rufata icyemezo cyarwo, ivuga mu ngingo yaryo ya 34(11) ko Umwanditsi Mukuru adashobora kwakira ikirego cy’ubujurire ku rubanza rwasubirishijwemo ingingo nshya, ibi nabyo bikaba byumvikanisha ko bene izo manza (ari iz’imbonezamubano, ari n’iz’inshinjabyaha) zitajurirwa kuko nta mpamvu yatuma ubujurire budashoboka mu Rukiko rw’Ikirenga ariko bugashoboka mu nkiko zo hasi.

[34] Ku bijyanye n’ibyo ababuranira Hakizimana bavuga ko urukiko rwareba ahari ukuri ntirwite ku bintu byanditse gusa nk’uko bigenda muri “common law”, urukiko rusanga nta shingiro bifite kuko uretse no kuba muri “common law” batirengagiza imanza zaciye n’amategeko akurikizwa, ntaho ikibazo gisuzumwa muri uru rubanza gihuriye no kumenya niba uregwa ahamwa n’icyaha cyangwa kitamuhama, ahubwo igisuzumwa ni ububasha bw’Urukiko Rukuru ku bujurire bw’urubanza rwasubirishijwemo ingingo nshya mu Rukiko Rwisumbuye.

[35] Hashingiwe kuri ibyo bisobanuro byose rero, uru rukiko rurasanga Urukiko Rukuru nta bubasha rwari rufite bwo kuburanisha mu bujurire urubanza rwasubirishijwemo ingingo nshya mu Rukiko Rwisumbuye.

III. ICYEMEZO CY’URUKIKO:

[36] Rwemeje ko ubujurire bw’Ubushinjacyaha bufite ishingiro.

[37] Rwemeje ko Urukiko Rukuru rutari rufite ububasha bwo kwakira ubujurire bw’urubanza RP/GEN0001/10/TGI/GSBO rwaciwe kuwa 02/02/2012.

[38] Rwemeje ko urubanza RPA/GEN0001/12/HC/KIG ruteshejwe agaciro.

[39] Ruvuze ko amagarama y’urubanza aherera ku isanduku ya Leta.