MBARUSHIMANA v. NTIGURIRWA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RCAA0010/13/CS (Hatangimbabazi, P.J., Mukamulisa na Hitiyaremye, J.) 19 Kamena 2015]

Amategeko agena ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Inzitizi y'iburabubasha – Ububasha bushingiye ku ndishyi zagenwe mu rubanza – Mu kugena ububasha bw'Urukiko rw'Ikirenga bushingiye ku ndishyi harebwa ingano y'indishyi zagenwe n'Urukiko urwo arirwo rwose mu rubanza, aho kureba gusa indishyi zagenwe n'Urukiko rwaciye urubanza ku rwego rw'ubujurire – Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28, agace ka 7.

Incamake y'ikibazo: Ku wa 22/08/2005 hatejwe cyamunara yakoreshejwe n'ubuyobozi bw'Umujyi wa Gitarama, ubu wahindutse Akarere ka Muhanga, buhagarariwe n'Umuyobozi wungirije ushinzwe Ubukungu n'iterambere mu rwego rwo kurangiza urubanza N° R.C.4227/14/2005 - RCA9404/133, Iyamuremye na bagenzi be batsinzemo Mbarushimana n'Urubanza Nº 39320/03 Banki ya Kigali (BK) yatsinzemo Mbarushimana na Nyiransabimana. Hagurishijwe inzu n'igipangu hamwe n'imigereka yayo (annexes) n'inzu nini ikodeshwa biri i Gahogo mu Mujyi wa Gitarama, zose zigurwa na Ntigurirwa, amafaranga avuyemo agabanywa abo Mbarushimana yarabereyemo imyenda. Ntigurirwa amaze kugura izo nzu mu cyamunara yahise atangira kubaka muri icyo kibanza inzu y'amagorofa atatu maze izari zihasanzwe zimwe arazisenya, anahabwa ibyangombwa byose byemeza ko ubwo butaka ari ubwe.

Ku itariki ya 20/09/2005 Mbarushimana yatanze ikirego mu Rukiko Rwisumbuye rwa Muhanga avuga ko irangizarubanza ritakurikije amategeko, ko rero cyamunara yakozwe ikwiye guseswa. Urukiko Rwisumbuye rwaciye urubanza RC0174/05/TP/GIT rwemeza ko ikirego cya Mbarushimana gifite ishingiro, maze rusesa cyamunara ruvuga ko yakozwe mu buryo budakurikije amategeko kuko yakoreshejwe n'umukozi utabifitiye ububasha. Mu kurangiza uru rubanza rwaciwe n'Urukiko Rwisumbuye, Umuhesha w'Inkiko yasubije Mbarushimana zimwe mu nzu yasanze zigihari naho inzu nini ikodeshwa agaragaza ko asanze itagihari kuberako aho yari iri hubatswe inzu nini y'amagorofa atatu (3), asaba Mbarushimana kuzabiregera mu Rukiko.

Ntigurirwa amaze kwamburwa uburenganzira kuri izo nzu, yatanze ikirego mu Rukiko Rwisumbuye rwa Muhanga asaba ko irangizarubanza ryamukuye muri zimwe mu nzu yaguze ryateshwa agaciro, hagati aho Mbarushimanana we atanga ikirego asaba ko Ntigurirwa yakurwa mu nzu yubatse mu kibanza cye (inzu y'igorofa). Bimaze kugaragara ko izi manza zombi zifitanye isano zahurijwe hamwe kandi ziburanishwa mu rubanza rumwe, maze uru Rukiko rwemeza ko ikirego cya Ntigurirwa ntashingiro gifite bityo ko irangizarubanza rigumaho naho ko icya Mbarushimana gifite ishingiro kuri bimwe bityo ko inzu y'amagorofa atatu (3) Ntigurirwa yayubatse kubutaka bwa Mbarushimana, rwemeza ko ariko iyo nzu Ntigurirwa ayigumana agaha Mbarushimana indishyi zingana na 83.300.000Frw, runategeka Ntigurirwa guha Akarere ka Muhanga 500.000Frw kuberako yagashoye mu manza nta mpamvu.

Ntigurirwa yajuririye urubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, maze uru Rukiko rwemeza ko ubwo bujurire bufite ishingiro, ko ikibanza cyubatsemo inzu ifite amagorofa atatu (3) ari icya Ntigurirwa bityo irangizarubanza ryakozwe kuwa 13/10/2010 rikabarikuweho, indishyi zingana na 83.300.000Frw yaciwe zivanyweho, kimwe na

500.000Frw yagenewe Akarere ka Muhanga. Mbarushimana yajuririye urubanza mu Rukiko rw'Ikirenga avuga ko, umucamanza yivuguruje akemeza ko cyamunara ivuyeho nyamara ntabishingireho ngo yemeze ko ubwo iyo cyamunara ivuyeho uwaguze asubizwa amafaranga yatanze na nyirinzu akazisubirana bityo ko ibi yagombaga kubishingiraho akemeza ko irangiza rubanza rifite agaciro.

Iburanisha rigitangira, Me Habineza Jean Paul uburanira abazungura ba Ntigurirwa yatanze inzitizi yo kutakira ubujurire bwa Mbarushimana avuga ko n'ubwo mu Rukiko Rwisumbuye Mbarushimana yari yaragenewe indishyi zihwanye 83.300.000Frw, ariko mu rubanza rujuririrwa izo ndishyi zavanyweho bityo ko ashingiye ku ngingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ubujurire bwe butari mu bubasha bw'Urukiko rw'Ikirenga kuko nta ndishyi zirenze 50.000.000Frw Urukiko rwajuririwe rwagennye. Me Kayiranga Bernard uburanira Akarere ka Muhanga nawe yunga mu rya Me Habineza Jean Paul, ashimangira ko indishyi zivugwa muri iyi ngingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga rivuzwe haruguru ari iziba zemejwe n'umucamanza wo mu Rukiko Rukuru bityo ko ubujurire bwa Mbarushimana Boniface butari mu bubasha bw'Urukiko rw'Ikirenga.

Me Nsengiyaremye Jean Claude uburanira Mbarushimana avuga ko kuba icyo baburana ari agaciro k'indishyi zagenwe n'umucamanza wo mu Rukiko Rwisumbuye karengeje uwo mubare, bituma ubujurire bwabo bujya mu bubasha bw'Urukiko rw'Ikirenga. Urukiko rwasanze rugomba kubanza gufata umwanzuro kuri iyi nzitizi maze iba ariyo yonyine igibwaho impaka.

Incamake y'icyemezo: 1. Isesengura ry'agace ka 7 k'ingingo ya 28 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ryumvikanisha ko igihe habaye impaka ku gaciro k'indishyi zagenwe n'inkiko zibanza, umucamanza uvugwa wakemura izo mpaka, atari uw'Urukiko Rukuru gusa (cyangwa Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare), ahubwo ashobora no kuba umucamanza washyikirijwe ubujurire bityo ubujurire bushingiye kuri izo mpaka bukaba buri mu bubasha bw'Urukiko rw'Ikirenga.

Inzitizi nta shingiro ifite.
Ubujurire buri mu bubasha bw'Urukiko rw'Ikirenga.
Amagarama y'urubanza arasubitswe.

Amategeko yashingiweho:
Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28, agace ka 7.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Inkomoko y'uru rubanza ni cyamunara yakozwe ku itariki ya 22/08/2005 harangizwa urubanza N° R.C.4227/14/2005 - RCA9404/133 Iyamuremye Nathanaël na bagenzi be

batsinzemo Mbarushimana Boniface n'Urubanza Nº 39320/03 Banki ya Kigali (BK) yatsinzemo Mbarushimana Boniface na Nyiransabimana Gaudence. Muri iyo cyamunara hagurishijwe inzu n'igipangu hamwe n'imigereka yayo (annexes) n'inzu nini ikodeshwa biri i Gahogo mu Mujyi wa Gitarama. Cyamunara yakoreshejwe n'ubuyobozi bw'Umujyi wa Gitarama, ubu wahindutse Akarere ka Muhanga, buhagarariwe n'Umuyobozi wungirije ushinzwe Ubukungu n'iterambere.

[2] Amazu yose uko yatangajwe mu cyamunara yaguzwe na Ntigurirwa Eustache, amafaranga agabanywa hagati y'abacuruzi bari bafitanye ikibazo na Mbarushimana hamwe na BK kubera umwenda yari ayifitiye. Ntigurirwa amaze kugura ayo mazu mu cyamunara yahise atangira kubakamo andi mashya, ayari ahari ayakuraho yubakamo inzu y'amagorofa atatu, anahabwa ibyangombwa byose byemeza ko ubwo butaka ari ubwe.

[3] Ku itariki ya 20/09/2005 Mbarushimana Boniface yatanze ikirego mu Rukiko Rwisumbuye rwa Muhanga avuga ko irangizarubanza ritakurikije amategeko, ko rero cyamunara yakozwe ikwiye guseswa. Ku itariki ya 8/02/2007 Urukiko rwaciye urubanza N° RC0174/05/TP/GIT rwemeza ko ikirego cya Mbarushimana gifite ishingiro, ko cyamunara isheshwe kubera ko yakozwe mu buryo budakurikije amategeko kuko yakoreshejwe n'umukozi utabifitiye ububasha.

[4] Mu kurangiza uru rubanza, niho havutse ikibazo kubera ko Umuhesha w'Inkiko yashubije Mbarushimana Boniface amazu, avuga ko asanze amazu amwe agihari akaba ayamusubije, ko ariko inzu nini ikodeshwa asanze idahari kubera ko aho yari iri hubatswe inzu nini y'amagorofa atatu (3), asaba Mbarushimana kuzabiregera mu Rukiko.

[5] Ku wa 28/10/2010 Ntigurirwa Eustache wari waraguze amazu mu cyamunara anafite ibyangombwa byayo hamwe n'ibyemezo bimwemerera kubaka kuri ubwo butaka bwose, yatanze ikirego mu Rukiko Rwisumbuye rwa Muhanga asaba ko irangizarubanza ryamukuye muri amwe mu mazu yaguze ryateshwa agaciro, Mbarushimana na we atanga ikirego asaba ko Ntigurirwa yakurwa mu nzu yubatse mu kibanza cye (inzu y'igorofa). Izi manza zombi zahurijwe mu rubanza rumwe ziraburanishwa, maze ku itariki ya 18/11/2011 Urukiko rwemeza ko ikirego cya Ntigurirwa nta shingiro gifite, ko irangizarubanza rigumaho.

[6] Ku kirego cya Mbarushimana Boniface, Urukiko rwemeje ko gifite ishingiro kuri bimwe, rwemeza ko inzu y'amagorofa atatu (3) Ntigurirwa yayubatse ku butaka bwa Mbarushimana, rwemeza ko ariko iyo nzu Ntigurirwa ayigumana agaha Mbarushimana indishyi zingana na 83.300.000Frw, rutegeka Ntigurirwa guha Akarere ka Muhanga amafaranga ibihumbi magana atanu (500.000Frw) kubera ko yagashoye mu manza nta mpamvu.

[7] Ntigurirwa Eustache yajuririye urubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, ku itariki ya 26/06/2012 uru rukiko ruca urubanza rwemeza ko ubwo bujurire bufite ishingiro, ko ikibanza cyubatsemo inzu ifite amagorofa atatu (3) ari icya Ntigurirwa Eustache, ko irangizarubanza ryakozwe ku wa 13/10/2010 rikuweho, ko indishyi zingana na 83.300.000Frw yaciwe zivanyweho, kimwe n'amafaranga 500.000 yagenewe Akarere ka Muhanga.

[8] Mbarushimana Boniface yajuririye urubanza mu Rukiko rw'Ikirenga avuga ko mu cyemezo cye, umucamanza yivuguruje, aho yavuze ko cyamunara ivuyeho arangije ntiyabishingiraho afata icyemezo, ko nyuma yo kwemeza ko iyo cyamunara ivuyeho

uwaguze asubizwa amafaranga yatanze na nyiri amazu akayasubirana yagombaga kubishingiraho akemeza ko irangizarubanza rifite agaciro.

[9] Iburanisha mu ruhame ryabaye ku itariki ya 19/5/2015, Mbarushimana Boniface aburanirwa na Me Nsengiyaremye Jean Claude, abazungura ba Ntigurirwa Eustache baburanirwa na Me Habineza Jean Paul, naho Akarere ka Muhanga gahagarariwe n'Intumwa ya Leta, Me Kayiranga Bernard.

[10] Iburanisha rigitangira, Me Habineza Jean Paul uburanira abazungura ba Ntigurirwa Eustache yatanze inzitizi yo kutakira ubujurire bwa Mbarushimana Boniface avuga ko butari mu bubasha bw'Urukiko rw'Ikirenga, Urukiko rufata icyemezo cyo kubanza kuyifataho umwanzuro maze iyo nzitizi aba ariyo yonyine igibwaho impaka.

II. ISESENGURWA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba ubujurire bwa Mbarushimana Boniface butari mu bubasha bw'Urukiko rw'Ikirenga.

[11] Me Habineza Jean Paul avuga ko mbere yo kujya mu mizi y'urubanza habanza gusuzumwa ibijyanye n'ububasha bw'Urukiko rw'Ikirenga nk'uko buteganywa n'ingingo ya 28, igika cya kabiri, y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga. Avuga ko mu Rukiko Rwisumbuye Mbarushimana Boniface yari yaragenewe indishyi zihwanye na miliyoni mirongo inani n'eshatu n'ibihumbi magana atatu by'amafaranga y'u Rwanda (83.300.000), ko ariko mu rubanza rujuririrwa izo ndishyi zavanyweho.

[12] Avuga ko ashingiye ku ngingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ubujurire bwa Mbarushimana Boniface butari mu bubasha bw'uru rukiko kubera ko urubanza rwaciwe n'Urukiko Rukuru, urugereko rwa Nyanza, ari narwo rujuririrwa,nta ndishyi zirenze miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000) rwagennye.

[13] Me Nsengiyaremye Jean Claude uburanira Mbarushimana Boniface avuga ko bajurira bashingiye ku ngingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha imanza zaciwe n'Urukiko Rukuru ku rwego rwa kabiri, iyo izo manza zagenwemo n'umucamanza indishyi nibura zifite agaciro ka miliyoni mirongo itanu (50.000.000), cyangwa se zifite agaciro gahwanye n'izo miliyoni. Avuga ko kuba rero icyo baburana ari agaciro k'indishyi zagenwe n'umucamanza wo mu Rukiko Rwisumbuye karengeje uwo mubare, bituma ubujurire bwabo bujya mu bubasha bw'Urukiko rw'Ikirenga.

[14] Me Kayiranga Bernard uburanira Akarere ka Muhanga yunga mu rya Me Habineza Jean Paul uburanira abazungura ba Ntigurirwa Eustache, avuga ko ubujurire bwa Mbarushimana Boniface butari mu bubasha bw'Urukiko rw'Ikirenga, na we agashingira ku ngingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ashimangira ko indishyi zivugwa muri iyi ngingo ari iziba zemejwe n'umucamanza wo mu Rukiko Rukuru.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 28 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, igika cya kabiri, agace ka 7° 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 miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000Frw) cyangwa se zifite agaciro kagenwe n'umucamanza igihe habaye impaka, kangana nibura na 50.000.000Frw)".

[16] Urukiko rurasanga hakurikijwe agace ka 7, k'ingingo ya 28 imaze kuvugwa, hibazwa niba ibigomba gushingirwaho mu kugena ububasha bw'Urukiko rw'Ikirenga, ari indishyi zagenwe n'Urukiko Rukuru (cyangwa Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare) rwonyine zingana nibura na 50.000.000Frw, cyangwa indishyi zifite agaciro kagenwe n'umucamanza w'Urukiko Rukuru wenyine (cyangwa Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare) igihe habaye impaka, kangana nibura na 50.000.000Frw.

[17] Urukiko rurasanga n'ubwo agace ka 7 kavugwa muri iyi ngingo kajyana n'interuro yose uko yanditse mu ntangiro y'ingingo ya 28 aho ivuga "imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare", imyandikire yo mu gace ka 7, ntaho igaragaza ku buryo bweruye ko "urukiko" ruvugwamo, ari Urukiko Rukuru rwonyine (cyangwa Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare), ndetse mu gifaransa hakaba handitse "une juridiction de jugement ", bisobanuye Urukiko muri rusange (atari Urukiko Rukuru gusa cyangwa Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare), ahubwo hashobora no kurebwa ingano y'indishyi zagenwe n'urukiko urwo ari rwo rwose muri urwo rubanza, hatarebwe gusa indishyi zagenwe n'urukiko rwaciye urubanza rujuririrwa.

[18] Isesengura ry'iyi ngingo kandi ryumvikanisha ko igihe habaye impaka ku gaciro k'indishyi zagenwe n'inkiko zibanza, umucamanza uvugwa wakemura izo mpaka, atari uw'Urukiko Rukuru gusa (cyangwa Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare), ahubwo ashobora no kuba umucamanza washyikirijwe ubujurire mu Rukiko rw'Ikirenga, ibyo kandi bikaba bihuza n'ibyemezo bimwe byagiye bifatwa mu Rukiko rw'Ikirenga ku kibazo gisa n'iki.

[19] Ku birebana n'uru rubanza, Urukiko rurasanga impaka zari mu Rukiko Rukuru, Urugereko rwa Nyanza, zari zishingiye ku ngano y'indishyi zatanzwe n'Urukiko Rwisumbuye zingana na miliyoni mirongo inani n'eshatu n'ibihumbi magana atatu by'amafaranga y'u Rwanda (83.300.000) ahwanye n'indishyi zo kuba Ntigurirwa Eustache yarubatse inzu ku kibanza Urukiko rwemeje ko ari icya Mbarushimana Boniface, izo mpaka zikaba ari nazo zakomeje mu bujurire bwa Mbarushimana mu Rukiko rw'Ikirenga nyuma y'aho Urukiko Rukuru, Urugereko rwa Nyanza rukuriyeho izo ndishyi.

[20] Hashingiwe rero ku bisobanuro byatanzwe haruguru, mu gihe bigaragara ko impaka zikigibwa ku gaciro k'indishyi zingana na miliyoni mirongo inani n'eshatu n'ibihumbi magana atatu by'amafaranga y'u Rwanda (83.300.000) zagenwe n'umucamanza w'Urukiko Rwisumbuye, Urukiko rurasanga ubujurire bushingiye kuri izo mpaka buri mu bubasha bw'Urukiko rw'Ikirenga hakurikijwe ibivugwa mu gace ka 7, k'ingingo ya 28 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko inzitizi yatanzwe na Succession Ntigurirwa nta shingiro ifite ;

[22] Rwemeje ko ubujurire bwa Mbarushimana Boniface buri mu bubasha bw'Urukiko rw'Ikirenga;

[23] Rwemeje ko iburanisha ry'uru rubanza rizakomeza ku wa 15/09/2015;

[24] Ruvuze ko amagarama y'urubanza abaye asubitswe.