MUNYAMPUNDU N'ABANDI v. UMUJYI WA KIGALI

[Rwanda URUKIKO RW'IKIRENGA – RADA0011/13/CS (Mukanyundo, P.J., Rugabirwa na Ngagi, J.) 18 Werurwe 2016]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Icyemezo cy'ubutegetsi – Iyimurirwa ry'inshingano z'urwego rw'ubutegetsi mu rundi rwego rw'ubutegetsi – Itakamba – Urwego rutakambirwa kandi rukaregwa – Igihe inshingano zivuye mu bubasha bw'Urwego rw'ubutegetsi zikimurirwa mu bubasha bw'Urundi rwego, biba impamvu ituma Urwego rwafashe icyemezo gisabirwa kuvanwaho izo nshingano zikiri mu bubasha bwarwo atari rwo rutakambirwa cyangwa ruregwa, ahubwo hatakambirwa kandi hakanaregwa urwego rw'ubutegetsi izo nshingano zimuriwemokuko ari rwo rugomba kubazwa ibijyanye n'ibyemezo byafashwe n'urwego rwari rusanganywe izo nshingano – Itakamba ryakorewe imbere y'Umuyobozi utari ugifite ububasha mu gihe ryakorewe ntirihabwa Agaciro – Itegeko N°08/2006 ryo ku wa 24/02/2006 rigena imiterere, imitunganyirize n'imikorere y'Akarere, ingingo ya 67(17) – Itegeko N°18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 339.

Amategeko agenga imirimo nshinganwa cyangwa amasezerano – Indishyi – Kuba byemejwe ko ubujurire nta shingiro bufite, byumvikanisha ko nta ndishyi zikwiye guhabwa abajuriye cyane ko uregwa nta kosa rigaragara yakoze ryaba impamvu y'uburyozwe – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamake y'ikibazo: Nyuma yaho umujyi wa Kigali weguriye Kalisa ikibanza N°1068 kiri mu Murenge wa Kacyiru, Akarere ka Gasabo cyahoze ari icya Gatarayiha akaba yari yaragihaye abana be, abo bana ari bo Munyampundu, Muhizi, Mukarwego na Sebahire batakambiye umujyi wa Kigali basaba kubahiriza ibiteganywa n'amategeko arebana no kwimura abantu ku mpamvu z'inyungu rusange, cyane cyane ibijyanye no gutanga indishyi zikwiye.

Munyampundu na bagenzi be babonye nta gisubizo bahawe ku gutakamba kwabo, bareze Ubuyobozi bw'Umujyi wa Kigali mu Rukiko Rukuru basaba gusesa icyemezo kibambura icyo kibanza maze Urukiko rwemeza ko ikirego cyabo kitakiriwe ku mpamvu z'uko bareze uwo batagombaga kurega kuko bagombaga kurega Akarere ka Gasabo bitewe n'uko igihe ikibanza cyatangwaga ibirebana n'ibibanza byari mu bubasha bw'Umujyi wa Kigali, ariko mu gihe cy'urubanza ibirebana n'imikoreshereze y'ubutaka no gutanga ibibanza bikaba biri mu nshingano z'Akarere.

Munyampundu na bagenzi be bajuriye Urukiko rw'Ikirenga bavuga ko Urukiko Rukuru rwashingiye ku itegeko ridafite aho rihuriye n'iyakirwa ry'ikirego kandi ko kuba inshingano yo gutanga ibibanza ifitwe n'Akarere, bidasobanura ko ivanwaho ry'icyemezo cyafashwe n'Umujyi wa Kigali nabyo bigomba kubazwa Akarere kuko atari ko kafashe icyo cyemezo, ndetse banaherako basa indishyi zinyuranye.

Incamake y'icyemezo: 1. Kuba inshingano zo gutanga ubutaka zaravuye mu bubasha bw'Umujyi wa Kigali zikajya mu bubasha bw'Uturere turi mu ifasi yawo, ni mpamvu yatuma Umujyi wa Kigali utaregwa mu rubanza rwerekeranye n'itangwa ry'ikibanza ryakozwe izo nshingano zikiri mu bubasha bwawo, ahubwo hakaregwa Akarere kuko ari nako gafite inshingano zo kubazwa ibibazo byose bijyanye n'imitangire y'ibibanza biri mu ifasi yako, harimo n'ibitarakemuwe n'Umujyi wa Kigali.

2. Itakamba ryakorewe imbere y'Umuyobozi utari ugifite ububasha igihe ryakorewe ntirihabwa agaciro.

3. Nta ndishyi zitangwa mu rubanza igihe bigaragara ko uregwa nta kosa yakoze.

Ubujurire nta shingiro bufite.
Amagarama y'urubanza ahwanye n'ibyarukozwemo.

Amategeko yashingiweho:
Itegeko N°08/2006 ryo ku wa 24/02/2006 rigena imiterere, imitunganyirize n'imikorere y'Akarere, ingingo 67.
Itegeko N°18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 339.
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François bavuga ko Se Gatarayiha Frédéric yabasigiye ikibanza gifite N°1068 kiri mu Murenge wa Kacyiru, Akarere ka Gasabo, nyuma baza kumva ko Umujyi wa Kigali wacyeguriye uwitwa Kalisa Evariste. Ku wa 14/08/2009, bandikiye Umuyobozi w'Umujyi wa Kigali ibaruwa itakamba basaba kubahiriza ibiteganywa n'amategeko arebana no kwimura abantu ku mpamvu z'inyungu rusange, cyane cyane ibijyanye no gutanga indishyi zikwiye.

[2] Ku wa 14/01/2010, Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François bashyikirije Urukiko Rukuru ikirego kigamije gusaba gusesa icyemezo kibambura icyo kibanza. Urwo Rukiko rwaciye urubanza N° RAD0008/10/HC/KIG ku wa 11/12/2012, rwemeza ko ikirego cyabo kitakiriwe.

[3] Mu gufata icyo cyemezo, Urukiko Rukuru rwasanze icyemezo giha Kalisa Evariste ikibanza N°1068 cyarafashwe na Perefe w'Umujyi wa Kigali ku wa 07/03/2001, abarega batakambira uwo Muyobozi ku wa 14/08/2009 basaba ko icyo cyemezo cyavaho, hanyuma urwo Rukiko rwanzura ruvuga ko kuba igihe ikibanza cyatangwaga ibirebana n'ibibanza byari mu bubasha bw'Umujyi wa Kigali, ariko ubu (ni ukuvuga igihe batangiye ikirego), ibirebana n'imikoreshereze y'ubutaka no gutanga ibibanza bikaba biri mu nshingano z'Akarere, byumvikanisha ko Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François bareze uwo batagombaga kurega kuko bagombaga kurega Akarere ka Gasabo, bityo ruvuga ko ikirego cyabo kitagomba kwakirwa hashingiwe ku ngingo ya 67, agace ka 17, y'Itegeko N°08/2006 ryo ku wa 24/02/2006 rigena imiterere, imitunganyirize n'imikorere y'Akarere.

[4] Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François bajuririye Urukiko rw'Ikirenga bavuga ko Urukiko Rukuru rwashingiye ku Itegeko[1] ridafite aho rihuriye n'iyakirwa ry'ikirego kuko impamvu zituma ikirego kitakirwa ziteganywa mu ngingo za 2, 77 na 142 z'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kandi ko kuba inshingano yo gutanga ibibanza zifitwe n'Akarere, bidasobanura ko ivanwaho ry'icyemezo cyafashwe n'Umujyi wa Kigali bigomba kubazwa Akarere kuko atari ko kafashe icyo cyemezo, ko ahubwo kugira ngo hamenyekane ugomba kuregwa, hagomba gusuzumwa uwafashe icyemezo gisabirwa kuvanwaho nk'uko biteganywa n'ingingo ya 93, igika cya 1, y'Itegeko Ngenga N°51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ko kuba uwafashe icyemezo ari Perefe w'Umujyi wa Kigali ari nawe watakambiwe nk'uko byateganywaga n'ingingo ya 339 y'Itegeko N°18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bigaragaza ko bubahirije amategeko. Basabye indishyi zitandukanye nk'uko zigaragara mu mwanzuro wabo.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 16/02/2016, abajuriye bahagarariwe na Me Nkanika Alimasi, naho Umujyi wa Kigali uburanirwa na Me Kayiranga Rukumbi Bernard, Intumwa ya Leta.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

Kumenya niba kuba inshingano zo gutanga ubutaka zaragiye mu bubasha bw'Akarere ka Gasabo, byatuma Umujyi wa Kigali utaregwa mu rubanza rwerekeranye n'itangwa ry'ikibanza ryakozwe bikiri mu bubasha bwawo.

[6] Me Nkanika Alimasi, uburanira abajuriye, avuga ko Urukiko Rukuru rutakiriye ikirego cyabo rushingiye ku ngingo ya 67 y'Itegeko N°08/2006 ryo ku wa 24/02/2006 rigena imiterere, imitunganyirize n'imikorere y'Akarere kandi bararegeye kuvanaho icyemezo cyafashwe n'Umujyi wa Kigali kibambura ikibanza, cyamara kuvanwaho, bityo icyo kibanza kigasubizwa bene cyo aribo Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na sebahire François. Avuga ko Umucamanza yasobanuye ko bareze uwo batagombaga kurega, ariko ko yirengagije ko impamvu yatumye ikibanza kiregerwa ishingiye ku cyemezo cyafashwe n'Umujyi wa Kigali.

[7] Me Kayiranga Rukumbi Bernard, uburanira Umujyi wa Kigali, avuga ko Ubutegetsi bwa Leta ari bumwe kandi ko buhoraho, ko iyo inshingano z'urwego runaka rwa Leta zihawe urundi rwego, urwo rwego rwa nyuma ruzungura izo nshingano, rukanaryozwa amakosa yaba yarakozwe hagati aho. Asobanura ko, mu uru rubanza, inshingano zirebana n'ibibanza mu Mujyi wa Kigali zeguriwe Uturere, bivuze ko imanza zirebana n'ubutaka, n'ubwo ibyemezo byaba byarafashwe n'Umujyi wa Kigali, zigomba kubazwa Uturere; ko Urukiko rw'Ikirenga rwamaze gufata umurongo ku bibazo bisa n'iki, mu rubanza Nº RCAA0057/05/CS, Succession Rukeba c/ MINITRAPE rwaciwe ku wa 10/02/2006, aho Urukiko rwasanze, kugira ngo urubanza rukomeze kuburanishwa, hagomba guhamagazwa Umujyi wa Kigali nk'umuzungura wa MINITRAPE, bityo ko yumva Urukiko rw'Ikirenga rwahamagaza

[1]Rwashingiye ku ngingo ya 67, agace ka 17, y'Itegeko N°08/2006 ryo ku wa 24/02/2006 rigena imiterere, imitunganyirize n'imikorere y'Akarere.

Akarere ka Gasabo nk'uko mu rubanza rumaze kuvugwa haruguru Umujyi wa Kigali wahamagajwe urubanza rugakomeza.

UKO URUKIKO RUBIBONA

[8] Ingingo ya 67, agace ka 17, y'Itegeko N°08/2006 ryo ku wa 24/02/2006 rigena imiterere, imitunganyirize n'imikorere y'Akarere, iteganya ko Komite Nyobozi y'Akarere ishinzwe kwita ku mikoreshereze y'ubutaka, gutunganya no gutanga ibibanza mu Karere.

[9] Muri uru rubanza, dosiye igaragaza ko icyemezo giha Kalisa Evariste ikibanza N°1068 cyafashwe na Perefe w'Umujyi wa Kigali ku wa 07/03/2001. Igaragaza na none ko Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François batakambiye Umuyobozi w'Umujyi wa Kigali ku wa 14/08/2009 basaba ivanwaho ry'icyo cyemezo nk'uko byateganywaga n'ingingo ya 339 y'Itegeko N°18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga icyo gihe.

[10] Urukiko rurasanga, nk'uko Urukiko Rukuru rwabibonye, kuba igihe ikibanza cyavuzwe haruguru cyahabwaga Kalisa Evariste, gutanga ibibanza byari mu bubasha bw'Umujyi wa Kigali, hanyuma igihe cyo kurega izo nshingano zikaba zari zarahawe Akarere, ibyo byumvikanisha ko Umujyi wa Kigali atari wo wagombaga kuregwa nyuma y'itakamba ryakozwe na Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François, kuko mu Itegeko N°08/2006 ryo ku wa 24/02/2006 ryavuzwe haruguru, ntaho umushingamategeko yateganyije ko ku manza zikomoka ku byemezo byo gutanga ibibanza byafashwe mbere y'uko iryo tegeko risohoka, hazaregwa Umujyi wa Kigali, ibi bikaba bisobanura ko Akarere ka Gasabo kahawe ububasha ku birebana n'imikoreshereze y'ubutaka no gutanga ibibanza, ari nako gafite inshingano zo kubazwa ibibazo byose bijyanye n'imitangire y'ibibanza biri mu ifasi yako, harimo n'ibitarakemuwe n'Umujyi wa Kigali (transfert des droits et des obligations).

[11] Urukiko rurasanga, na none, rutashingira ku kuba itakamba ryarakorewe imbere y'Umuyobozi w'Umujyi wa Kigali kugira ngo rwemeze ko Umujyi wa Kigali ari wo ugomba kuregwa, kuko iryo takamba ryakorewe imbere y'Umuyobozi utari ugifite, mu bubasha bwe, inshingano zo gutanga ibibanza.

[12] Hakurikijwe ibimaze gusobanurwa haruguru, Urukiko rurasanga kuba inshingano zo gutanga ubutaka zaravuye mu bubasha bw'Umujyi wa Kigali zikajya mu bubasha bw'Uturere turi mu ifasi yawo, ari impamvu yatuma Umujyi wa Kigali utaregwa mu rubanza rwerekeranye n'itangwa ry'ikibanza ryakozwe izo nshingano zikiri mu bubasha bwawo.

Kumenya niba abajuriye bagenerwa indishyi basabye

[13] Me Nkanika Alimasi, uburanira abajuriye, avuga ko kuba Umujyi wa Kigali warabaruhije usaba ibidateganywa n'amategeko, bikaba byaratumye bagira ibyo batakaza mu bujurire, ndetse bikanatinza urubanza rwabo, Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François bagomba guhabwa 1.000.000Frw y'ikurikiranarubanza (500.000Frw kuri buri rwego), 1.000.000Frw y'igihembo cya Avoka na 12.000.000Frw y'indishyi z'akababaro (3.000.000Frw kuri buri wese).

[14] Me Kayiranga Rukumbi Bernard, uburanira Umujyi wa Kigali, avuga ko izo ndishyi zisabwa n'abajuriye ntaho zishingiye kuko Umujyi wa Kigali wakoresheje uburenganzira

bwawo nk'uregwa, ko rero bitafatwa nko gutinza urubanza kuko gutanga inzitizi ari uburenganzira umuburanyi yemererwa n'amategeko.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCL.III), iteganya ko: "Igikorwa cyose cyangirije undi gitegeka nyir'ugukora ikosa kuriha ibyangiritse".

[16] Urukiko rurasanga, nk'uko byasobanuwe haruguru, kuba ubujurire bwa Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François nta shingiro bufite, byumvikanisha ko nta ndishyi bakwiye guhabwa muri uru rubanza, cyane cyane ko nta kosa Umujyi wa Kigali wakoze ku buryo wariryorezwa indishyi nk'uko biteganywa n'ingingo ya 258 yavuzwe haruguru.

III. ICYEMEZO CY'URUKIKO

[17] Rwemeje ko ubujurire bwatanzwe na Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe na Sebahire François nta shingiro bufite.

[18] Rwemeje ko urubanza N°RAD0008/10/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 11/12/2012, rudahindutse.

[19] Rutegetse ko ingwate y'amagarama yatanzwe n'abajuriye ihwanye n'ibyakozwe mu rubanza.