SEMANYENZI v. NTIHABOSE

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/CIV0010/15/CS (Mutashya, P.J., Karimunda na Gakwaya, J.) 22 Mutarama 2016]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Gusubirishamo urubanza ku mpamvu z'akarengane – Kwiyambura ububasha kw'inteko y'abunzi – Icyemezo cyafashwe n'inteko y'abunzi – Umuburanyi uregeye Urukiko rw'Ibanze nyuma y'uko Inteko y'abunzi yemeje ko idafite ububasha, ntafatwa nk'ujuririye umwanzuro w'abunzi ahubwo aba aregeye urukiko rubifitiye ububasha bwa mbere kubw'ibyo rero ibihe bibarwa hatangwa ubujurire ntibyakoreshwa mu kuzitira ikirego cye – Itegeko-Ngenga N^{o}31/2006 ryo ku wa 14/08/2006 rigena imiterere, ifasi, ububasha n'imikorere ya Komite y'Abunzi, ingingo ya 8.

Incamake y'ikibazo: Semanyenzi yareze Ntihabose mu Nteko y'Abunzi y'Akagali ka Nganzo avuga ko yigabije isambu ye nyamara iyo sambu yari yarayitsindiye mu Rukiko rwa Mbere rw'Iremezo aho yayiburanaga na Gabiro, sekuru wa Ntihabose. Intekoy'Abunzi yasanze nta bubasha ifite bwo gukemura icyo kibazohashingiwe kugaciro k'ikiburanwa.

Semanyenzi yaregeye Urukiko rw'Ibanze rwa Nyamabuye maze urwo Rukiko rusanga Ntihabose nta kimenyetso agaragaza cy'uko yigeze aragwa isambu iburanwa kandi ko n'iyo yaba yarayirazwe nta gaciro byahabwa kuko yaba yarayirazwe n'utari nyirayo kubera ko Semanyenzi yayitsindiye mu rubanza N^{o} RC1324/4, hanyuma rwemeza ko isambu iburanwa ari iya Semanyenzi ko kandi Ntihabose agomba kwishyura amafaranga y'insimburamubyizi hamwe nay'ibyatswe byose mu rubanza.

Ntihabose yajuririye Urukiko Rwisumbuye avuga ko Semanyenzi yabeshye avuga ko ahaburanwa ari ahe kuko yahatsindiye mu rubanza N^{o} RC1324/4 kandi ari aha Ntihabose kuberako yaharazwe na sekuru Gabiro. Urukiko rwaciye urubanza rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

Ntihabose yajuririye nanone Urukiko Rukuru avuga ko Urukiko Rwisumbuye rwaciye urubanza rutagaragaza na busa impamvu rwashingiyeho; urwo Rukiko rwemeza ko Semanyenzi yakerewe gutanga ikirego kivuye mu bunzi mu Rukiko rw'Ibanze bityo ko Urukiko rw'Ibanze n'Urukiko Rwisumbuye zirengagije ibihe biteganywa n'amategeko mu itangwa ry'ibirego bivuye mu Bunzi kandi ari indemyagihugu, ibyo bikaba bifatwa nk'aho inkiko zombi zaciye urubanza nta mpamvu na busa zishingiyeho, bityo ko imanza zaciwe n'izo Nkiko zombi zikwiye kuvaho hakubahirizwa imyanzuro yafashwe n'Inteko y'Abunzi.

Semanyenzi yasubirishijemo urubanza ku mpamvu z'akarengane maze Urukiko rw'Ikirenga rusuzuma niba kuregera Urukiko rw'Ibanze nyuma y'icyemezo cy'iburabubasha cyafashwe n'Inteko y'Abunzi bigomba gufatwa nk'ubujurire kuburyo yaba yarakererewe kubutanga mu Rukiko rw'Ibanze rwa Nyamabuye.

Incamake y'icyemezo: Kuba inteko y'abunzi yariyambuye ububasha ku kirego ishingiye ku gaciro k'ikiburanwa ntihagire ubijuririra; ikirego gitanzwe mu Rukiko rw'Ibanze nticyafatwa nk'ubujurire butanzwe mu Rukiko kubera ko icyemezo cyayo kiba cyabaye ndakuka kubw'ibyo rero igihe Semanyenzi yatangaga ikirego mu Rukiko rw'Ibanze ntiyajuriraga ahubwo bwari ubwa mbere atanze ikirego mu Rukiko rubifitiye ububasha, bityo ibihe bibarwa hatangwa ubujurire bikaba bitakoreshwa mu kuzitira umuburanyi uregeye Urukiko rubifitiye ububasha bwa mbere .

Ikirego gisubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;
Urubanza RCAA0078/11/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ruvuyeho;
Urubanza RCA0358/010/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga n'urubanza RC0172/09/TB/NYBYE rwaciwe n'Urukiko rw'Ibanze rwa Nyamabuye zigumyeho;
Amagarama y'urubanzaaherereye ku regwa.

Amategeko yashingiweho:
Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 171 n'iya 172.
Itegeko-Ngenga N°31/2006 ryo ku wa 14/08/2006 rigena imiterere, ifasi, ububasha n'imikorere ya Komite y'Abunzi, ingingo ya 8.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Semanyenzi Déogratias yareze Ntihabose Théoneste ku Nteko y'Abunzi y'Akagali ka Nganzo avuga ko yigabije isambu ye nyamara iyo sambu ariyo Semanyenzi Déogratias yatsindiye mu rubanza N°RC1324/4 yaburanye na Gabiro Sekuru wa Ntihabose Théoneste, Urukiko rwa Mbere rw'Iremezo rwa Gitarama rukayimwegurira ku wa 23/04/2009. Inteko y'Abunzi yasanze hagendewe ku gaciro k'ikiburanwa, nta bubasha ifite bwo kuburanisha urwo rubanza kubera ko iyo sambu irengeje agaciro ka miliyoni eshatu y'amafaranga y'u Rwanda (3.000.000Frw).

[2] Nyuma y'icyemezo cy'Inteko y'Abunzi, Semanyenzi Déogratias yaregeye Urukiko rw'Ibanze rwa Nyamabuye. Mu rubanza N° RC0172/09/TB/NYBYE rwaciwe ku wa 24/06/2010, Urukiko rwasanze Ntihabose Théoneste nta kimenyetso agaragaza cy'uko yigeze aragwa isambu iburanwa kandi niyo yaba yarayirazwe nta gaciro byahabwa kuko yaba yarayirazwe n'utari nyirayo kubera ko Semanyenzi Déogratias yayitsindiye mu Rukiko, rwemeza ko isambu iburanwa ari iya Semanyenzi Deogratias, Ntihabose Théoneste ategekwa kwishyura amafaranga 8.500 y'insimburamubyizi na 46.740 y'ibyakozwe mu rubanza byose.

[3] Ntihabose Théoneste ntiyishimiye icyo cyemezo akijuririra mu Rukiko Rwisumbuye avuga ko Semanyenzi Déogratias yabeshye ko ahaburanwa yahatsindiye hose kandi ari aho Ntihabose Théoneste yarazwe na Sekuru Gabiro.

[4] Mu rubanza N° RCA0358/010/TGI/MHG rwaciwe ku wa 28/01/2011, Urukiko rwasanze Ntihabose Théoneste adatanga ibimenyetso by'ibyo avuga ko ahaburanwa yaharazwe na Sekuru Gabiro, rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe, Ntihabose Théoneste ategekwa kwishyura amagarama y'urubanza angana na 5.000Frw.

[5] Ntihabose Théoneste yajuririye mu Rukiko Rukuru, Urugereko rwa Nyanza avuga ko Urukiko Rwisumbuye rwaciye urubanza rutagaragaza na busa impamvu rwashingiyeho.

[6] Mu rubanza N° RCAA0078/11/HC/NYA rwaciwe ku wa 20/01/2012, Urukiko rwasanze mu gihe Abunzi bafashe umwanzuro ku wa 23/04/2009, Semanyenzi Déogratias atanga ikirego mu Rukiko ku wa 25/05/2009 kandi umunsi wa nyuma wo kuregera Urukiko wari ku wa 22/05/2009, rwemeza ko yakerewe gutanga ikirego, ko Urukiko rw'Ibanze n'Urukiko Rwisumbuye zirengagije ibihe biteganywa n'amategeko mu itangwa ry'ibirego bivuye mu Bunzi kandi ari indemyagihugu, inkiko zombi zikaba zaraciye urubanza nta mpamvu na busa zishingiyeho, bityo ko imanza zaciwe n'izo Nkiko zombi zikwiye kuvaho hakubahirizwa imyanzuro yafashwe n'Inteko y'Abunzi yo ku wa 23/04/2009, Semanyenzi Déogratias ategekwa gutanga amagarama y'urubanza angana na 22.000Frw.

[7] Semanyenzi yandikiye Urwego rw'Umuvunyi arusaba gusuzuma akarengane kabaye mu rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza. Kuwa 07/10/2014 Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urubanza N° RCAA0078/11/HC/NYA rwaciwe ku wa 20/01/2012 rusubirishwamo ku mpamvu z'akarengane.

[8] Mu cyemezo N°17/2015 cyo ku wa 31/03/2015, Perezida w'Urukiko rw'Ikirenga, yasabye Ubwanditsi bw'Urukiko rw'Ikirenga gushyira kuri gahunda y'iburanisha urubanza no RCAA0078/11/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 20/01/2012 kugira ngo hasuzumwe niba rushobora gusubirwamo ku mpamvu z'akarengane.

[9] Iburanisha mu ruhame ryabaye ku wa 08/12/2015, Semanyenzi Déogratias yitabye kandi aburanirwa na Me Kabagambe Joëlle, Ntihabose Théoneste nawe ahari kandi aburanirwa na Me Ndagijimana Viateur.

II. IKIBAZO KIGIZE URU RUBANZA N'ISESENGURA RYACYO

Kumenya niba kuregera Urukiko rw'Ibanze nyuma y'icyemezo cy'iburabubasha cyafashwe n'Inteko y'Abunzi bigomba gufatwa nk'ubujurire.

[10] Me Kabagambe Joëlle uburanira Semanyenzi Déogratias avuga ko babanje kuregera Inteko y'Abunzi y'Akagali ka Nganzo, bayisaba kwemeza imanza zihesha Semanyenzi Déogratias uburenganzira ku isambu iburanwa, ariko Inteko y'Abunzi isanga ikiburanwa gifite agaciro karengeje miliyoni eshatu y'amafaranga y'u Rwanda (3.000.000Frw), yemeza ko nta bubasha ifite bwo kuburanisha urwo rubanza, aricyo cyatumye batanga ikirego gishya mu Rukiko rw'Ibanze rwa Nyamabuye rwatesheje agaciro inzitizi yatanzwe na Ntihabose Théoneste wavugaga ko ubujurire bwatanzwe impitagihe, Urukiko rwemeza ko icyaregewe atari imyanzuro y'Abunzi ahubwo ko Semanyenzi Déogratias yatanze ikirego gishya kandi ko gifite ishingiro.

[11] Asobanura ko Ntihabose Théoneste yakomeje kuburanisha inzitizi yo kutakira ikirego mu Rukiko Rwisumbuye no mu Rukiko Rukuru, ariko ko mu nama ntegurarubanza mu Rukiko rw'Ikirenga, Me Ndagijimana Viateur uburanira Ntihabose Théoneste avuga ko inzitizi batanze mu Nkiko zibanza nta shingiro yari ifite kubera ko nyuma y'uko Inteko y'Abunzi yiyambuye ububasha, ikirego cyatanzwe mu Rukiko rw'Ibanze rwa Nyamabuye cyari gishya kandi cyihariye.

[12] Asoza avuga ko imiburanire ya Ntihabose Théoneste yayobeje Urukiko Rukuru kugeza aho ruvuze ko mu Rukiko rw'Ibanze haburanwe ubujurire ku myanzuro y'Abunzi kandi ko bwatanzwe bukererewe, akaba asaba uru Rukiko gukosora ayo makosa rutesha

agaciro urubanza rwaciwe n'Urukiko Rukuru, urubanza rwaciwe n'Urukiko Rwisumbuye rwa Muhanga rukagumana agaciro karwo.

[13] Me Ndagijimana Viateur uburanira Ntihabose Théoneste avuga ko yemera ko Urukiko Rukuru rwibeshye ruvuga ko icyaburanwaga mu Rukiko rw'Ibanze rwa Nyamabuye ari ubujurire kandi bwatanzwe impitagihe nyamara cyari ikirego gishya kubera ko batigeze baburanisha imizi y'urubanza, asobanura ko uwo yunganira yari yatanze ibibazo bibiri, icyo kutakira ikirego kubera ko ubujurire bwatanzwe impitagihe n'icy'uko Urukiko rw'Ibanze rwa Nyamabuye n'Urukiko Rwisumbuye rwa Muhanga zavuze ko Semanyenzi Déogratias atsinze ntacyo zishingiyeho, akaba asanga uburyo bwo gukosora amakosa yakozwe atari ukuvanaho icyemezo cy'Urukiko Rukuru ahubwo ari uguha Semanyenzi Déogratias amahirwe yo kugaragaza ibimenyetso by'ibyo aregera kugirango Ntihabose Théoneste abyisobanureho.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 171 y'Itegeko N^{o}21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: "Urukiko rwajuririwe iyo ruhinduye icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo keretse iyo ruruhinduye ku mpamvu y'uko rwaregewe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha". Naho ingingo ya 172 y'iryo Tegeko ivuga ko "Urukiko rutesheje agaciro urubanza rwajuririwe ntiruruburanisha bundi bushya mu mizi yarwo. Ababuranyi bashobora ariko kongera kuregera bundi bushya urukiko rwo ku rwego rwa mbere mu gihe bishoboka gukosora amakosa aba yakozwe".

[15] Ingingo ya 106, agace ka mbere, y'Itegeko-Ngenga N^{o}51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko "[Urukiko Rukuru] ruburanisha kandi imanza z'imbonezamubano zajuririwe, zaciwe mu rwego rwa kabiri n'Urukiko Rwisumbuye, mu gihe izo manza: 1^{o}. zitagaragaza na busa impamvu zashingiyeho mu icibwa ryazo, zishingiye ku Itegeko ritariho cyangwa zaciwe n'Urukiko rutabifitiye ububasha;…".

[16] Dosiye y'urubanza igaragaza ko Semanyenzi Déogratias yabanje kuregera Inteko y'Abunzi y'Akagali ka Nganzo asaba gusubizwa isambu ye yahugujwe na Ntihabose Théoneste, iyo Nteko ifata icyemezo ku wa 23/04/2009 ivuga ko ikiburanwa kirenze ububasha bwayo (cote 7), aricyo cyatumye ku wa 25/05/2009, Semanyenzi Déogratias aregera Urukiko rw'Ibanze rwa Nyamabuye (cotes 3-4), mu iburanisha ryabaye ku wa 09/09/2009, Semanyenzi Déogratias asobanura ko icyo asaba Urukiko ari ugutegeka Ntihabose Théoneste kumusubiza isambu ye yamuhuguje, uregwa nawe yiregura avuga ko atuye aho yarazwe na Sekuru Gabiro, ko nyuma y'imanza zabaye hagati ya Sekuru na Semanyenzi Deogratias, aho Sekuru yasigaranye yahamuraze, akaba yarahatuye guhera mu 1988, bituma Urukiko rubatuma igishushanyo mbonera cy'ikiburanwa ndetse runikorera n'iperereza mbere yo guca urubanza (cotes 11-31).

[17] Dosiye y'urubanza igaragaza kandi ko Urukiko rw'Ibanze rwa Nyamabuye rwasanze imyanzuro ya Semanyenzi Déogratias itanga ikirego yaraziye igihe ahubwo Icyemezo cy'Inteko y'Abunzi aricyo cyatinze kuboneka, Urukiko rwanzura kuri icyo kibazo ruvuga ko itinda ry'icyo cyemezo aririyo ryatumye ikirego cye kitandikirwa igihe mu bitabo by'ibirego, ariko ko yemerewe kurega, nyuma yo gusuzuma imiburanire y'impande zombi n'ibikubiye muri dosiye, Urukiko rusanga Ntihabose Théoneste atarugaragariza ibimenyetso by'uko

Sekuru yamuraze ahaburanwa kandi ko niyo yabigaragaza bitahamuhesha kubera ko Sekuru yahaburanye, akahatsindirwa na Semanyenzi Déogratias (cote 36).

[18] Inyandiko zigize dosiye zerekana kandi ko mu rwego rw'ubujurire mu Rukiko Rwisumbuye rwa Muhanga, Me Nsabimana Gabriel waburaniraga Ntihabose Théoneste yabanje gutanga inzitizi ijyanye n'iyakira ry'ikirego avuga ko Semanyenzi Déogratias yatinze kujuririra Urukiko rw'Ibanze rwa Nyamabuye kandi ko yabeshye ko ahaburanwa ari ahe, Urukiko rusanga Ntihabose Théoneste atagaragaza ibimenyetso by'ibyo avuga, rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe, iyo nzitizi yongeye gutangwa mu bujurire mu Rukiko Rukuru, Urugereko rwa Nyanza, urwo Rukiko ruca urubanza ku wa 20/10/2015, rwemeza ko imikirize y'Inkiko zombi ivuyeho kubera ko Semanyenzi Déogratias yaregeye Urukiko rw'Ibanze rwa Nyamabuye akerewe(cotes 35, 40 na 41).

[19] Urukiko rurasanga umwanzuro w'Inteko y'Abunzi y'Akagali ka Nganzo wo ku wa 23/04/2009 ugira uti: "Dushingiye ku ngingo ya 8 y'Itegeko-Ngenga N^{o}31/2006 ryo ku wa 14/08/2006 rigena imiterere, ifasi, ububasha n'imikorere ya Komite y'Abunzi, agaka ka mbere (1^{o}), Dusanze birenze [ibiburanwa] ububasha bwa Komite y'Abunzi ", byumvikanisha ko iyo Nteko yivanyeho ikirego cyose yari yaregewe na Semanyenzi Déogratias wagombaga gutanga ikirego gishya mu Rukiko rubifitiye ububasha kandi bikaba bitarasabaga ko yitwaza umwanzuro w'Inteko y'Abunzi ahubwo ari ukugaragaza ko hashingiwe ku gaciro k'ikiburanwa naho giherereye, Urukiko yaregeye arirwo rufite ububasha bwo kuburanisha urubanza rwe.

[20] Urukiko rurasanga kuba Semanyenzi Déogratias yarabwiye Urukiko rw'Ibanze rwa Nyamabuye ko yatindijwe kujurira n'uko ataboneye igihe umwanzuro w'Inteko y'Abunzi, urwo Rukiko narwo rukabishingiraho ruvuga ko ahawe amahirwe yo kuburana n'ubwo ikirego cye cyatinze kwandikwa mu Gitabo cy'Ibirego, byari ukwibeshya kubera ko nyuma yaho Inteko y'Abunzi yiyamburiye ububasha bwo kuburanisha ikirego cya Semanyenzi Deogratias, icyemezo cyayo cyabaye ndakuka, bivuze ko aregera Urukiko rw'Ibanze rwa Nyamabuye, Semanyenzi Déogratias atajuriraga ahubwo bwari ubwa mbere atanze ikirego mu Rukiko rubifitiye ububasha, bityo ibihe bibarwa hatangwa ubujurire bikaba bitakoreshwa mu kuzitira umuburanyi uregeye Urukiko rubifitiye ububasha bwa mbere.

[21] Urukiko rurasanga kandi ibimaze kuvugwa mu gika kibanziriza iki bishimangirwa n'uko mu gusuzuma ikirego cya Semanyenzi Deogratias, Urukiko rw'Ibanze rwa Nyamabuye rutitwaye nk'Urukiko rw'Ubujurire kubera ko rwacukumbuye kandi rusesengura ikirego nk'Urukiko ruregewe bwa mbere, kuko iyo biba ari ugusuzuma ubujurire, rwari kubanza guca urubanza kubirebana n'ububasha bw'Inteko y'Abunzi kuko aricyo cyonyine cyasuzumwe kandi cyemezwa n'iyo Nteko, kutabikora gutyo bikaba ari uko urubanza rutari mu bujurire.

[22] Urukiko rurasanga Urukiko Rukuru, Urugereko rwa Nyanza rwaribeshye ruvuga ko Inkiko zibanza zaciye imanza nta mpamvu na busa zigaragaje bituruka kukuba zarirengangije ibihe by'ijurira biteganywa n'amategeko, bituma ruburanisha urubanza ubundi rutari mu bubasha bwarwo, kuko iyo rusanga Urukiko rw'Ibanze rwa Nyamabuye rwaraburanishije uru rubanza ku rwego rwa mbere nk'uko uru Rukiko rubibona, Urukiko Rukuru, Urugereko rwa Nyanza rwari kubona ko ubujurire rwajuririwe butari mu bubasha bwarwo hashingiwe ku biteganywa n'ingingo ya 106, agace ka mbere, y'Itegeko-Ngenga N^{o}51/2008 ryo ku wa 09/09/2008 ryibukijwe haruguru, bisobanuye ko impamvu Urukiko Rukuru rwashingiyeho rwakira ubujurire kandi rutesha agaciro imanza zaciwe n'izo Nkiko nta shingiro ifite.

[23] Hashingiwe ku byasobanuwe haruguru, Urukiko rurasanga, urubanza N° RCAA0078/11/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 20/01/2012 rugomba kuvaho, hakagumaho urubanza N° RCA358/010/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 28/01/2011 rwemeje imikirize y'urubanza N°RC0172/09/TB/NYBYE rwaciwe n'Urukiko rw'Ibanze rwa Nyamabuye ku wa 24/06/2010.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeye kwakira ikirego cya Semanyenzi Déogratias gisaba gusubirishamo urubanza ku mpamvu z'akarengane kuko cyatanzwe mu buryo n'inzira bikurikije amategeko;

[25] Ruvuze ko icyo kirego gifite ishingiro;

[26] Ruvuze ko urubanza N° RCAA0078/11/HC/NYA rwaciwe n'UrukikoRukuru, Urugereko rwa Nyanza ku wa 20/01/2012 ruvuyeho;

[27] Ruvuze ko urubanza N° RCA0358/010/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 28/01/2011 n'urubanza RC0172/09/TB/NYBYE rwaciwen'Urukiko rw'Ibanze rwa Nyamabuye ku wa 24/06/2010 zigumyeho;

[28] Rutegetse Ntihabose Théoneste gutanga amagarama y'urubanza angana 100.000Frw.