RUSHOMINTWALI v. MUNYANGANZO N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RSOCAA0002/15/CS (Kanyange, P.J., Gatete na Munyangeri, J.) 09 Kamena 2017]

Amategeko agenga imiburanishirije y'imanza z'umurimo – Guhamagazwa mu rubanza – Iyo sosiyete yahamagajwe mu rubanza kugirango itange ibisobanuro ntiyafatwa nk'umuburanyi muri urwo rubanza ku buryo byabuza abanyamigabane bayo kurutambamira.

Incamake y'ikibazo: Munyangazo na Niyonzima baregeye Urukiko Rwisumbuye rwa Ngoma mu nyandiko y'ikirego itanzwe n'umuburanyi umwe, basaba ko SOPEM itegekwa kubahiriza amasezerano y'akazi no gutanga indishyi zo gusezererwa ku kazi, urwo Rukiko rubagenera indishyi. Rushomintwali yatambamiye urwo rubanza naho Mugisha na Ngarambe barugobokamo, SOPEM sarl irugobokeshwamo. Urwo Urukiko rwemeza ko imikirize y'urubanza rwatambamiwe ihindutse.

Munyanganzo na Niyonzima bajuririye Urukiko Rukuru bavuga ko Urukiko rutagombaga kwakira ikirego cya Rushomintwali, kuko nta bubasha yari afite bwo gutambamira urubanza SOPEM yaburanye, kandi ari umwe mu banyamuryango b'iyo sosiyete. Urwo Rukiko rwemeje ko Rushomintwali nta bubasha n'inyungu yari afite zo gutambamira urwo urubanza, kubera ko yari umunyamigabane wa SOPEM, kandi iyo sosiyete yararuhamagawemo.

Rushomintwali yajuririye Urukiko rw'Ikirenga avuga ko urukiko rwemeje ko SOPEM yabaye umuburanyi mu rubanza RSOC0002/14/TGI/NGOMA & RSOC0007/14/TGI/NGOMA kandi ibyo atari ukuri, kuko icyabaye aruko SOPEM yabajijwe muri urwo rubanza "à titre d'information".

Incamake y'icyemezo: Iyo sosiyete yahamagajwe mu rubanza kugirango itange ibisobanuro ntiyafatwa nk'umuburanyi muri urwo rubanza ku buryo byabuza abanyamigabane bayo kurutambamira.

Ubujurire bufite ishingiro;
Iburanisha ry'urubanza rizakomeza.

Amategeko yashingiweho:
Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 28, 171,176 niya 330.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Munyangazo Patrick na Niyonzima Théogène baregeye Urukiko Rwisumbuye rwa Ngoma mu nyandiko y'ikirego itanzwe n'umuburanyi umwe (requête unilatérale), basaba ko SOPEM itegekwa kubahiriza amasezerano y'akazi no gutanga indishyi zo gusezererwa ku kazi, maze ku wa 22/04/2014,

mu rubanza RSOC0002/14/TGI/NGOMA rwakosowe n'urundi RSOC0007/014/TGI/NGOMA, Niyonzima agenerwa indishyi zingana na 37.400.000Frw, na 20.400.000Frw kuri Munyanganzo.

[2] Rushomintwali Sylvestre yatambamiye urwo rubanza, Mugisha Juliet na Ngarambe Emmanuel barugobokamo, naho SOPEM sarl irugobokeshwamo, kuwa 17/10/2014 Urukiko Rwisumbuye rwa Ngoma rwemeza ko imikirize y'urubanza rwatambamiwe(RSOC0002/14/TGI/NGOMA&0007/014/TGI/NGOMA) ivanyweho, rutegeka SOPEM guha Niyonzima indishyi zingana na 3.650.000Frw, naho Munyanganzo agahabwa 2.400.000Frw

[3] Munyanganzo na Niyonzima bajuririye Urukiko Rukuru, Urugereko rwa Rwamagana (RSOCA0009/14/HC/RWG), mu mpamvu batanze hakaha hari iyo kuba Urukiko rutaragombaga kwakira ikirego cya Rushomintwali, kuko nta bubasha yari afite bwo gutambamira urubanza SOPEM yaburanye, kandi ari umwe mu banyamuryango b'iyo sosiyete.

[4] Ku wa 26/11/2014, Urukiko Rukuru rwemeje ko Rushomintwali nta bubasha n'inyungu yari afite zo gutambamira urubanza RSOC0002/14/TGI/NGOMA & 0007/14/TGI/NGOMA, kubera ko yari umunyamigabane wa SOPEM, kandi iyo sosiyete yararuhamagawemo igahagararirwa na Me Rwakayija John, rusanga iryo tambama ryarakozwe mu buryo bunyuranije n'amategeko, rutegeka ko urubanza RSOC0011/014/TGI/NGOMA ruvanyweho hakagumaho urubanza RSOC0002/14/TGI/NGOMA - RSOC0007/14/TGI/NGOMA, runategeka Rushomintwali, SOPEM, Mugisha na Ngarambe gufatanya guha abajuriye 150.000Frw batanze bajurira na 1.000.000Frw y'indishyi.

[5] Rushomintwali yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwemeje ko nta bubasha afite bwo gutambamira urubanza RSOC0002/14/TGI/NGOMA & RSOC0007/14/TGI/NGOMA kubera ko inyungu ze na SOPEM ari zimwe kandi ibyo atari ukuri, maze rwemeza ko SOPEM yahagarariwe muri urwo rubanza, ndetse runemeza ko yatambamiye urubanza mu gihe yari ahagarariwe na SOPEM bavuga ko yari iri mu rubanza kandi nyamara itarigeze irubamo umuburanyi.

[6] Ku wa 27/01/2017, nyuma yo gufata icyemezo ku nzitizi zari zabyukijwe n'abaregwa ariko urukiko ntiruzihe ishingiro, urubanza rwaburanishijwe mu mizi ku wa 04/04/2017, Rushomintwali ahagarariwe na Me Murutasibe Joseph afatanyije na Me Gashagaza Philibert, Mugisha Juliet ahagarariwe na Gashagaza Philibert, Munyanganzo ahagarariwe na Me Gashirabake Aboubakar, Niyonzima ahagarariwe na Me Gashema Félicien, Ngarambe ahagarariwe na Me Mihigo Bienvenue, naho SOPEM ihagarariwe na Me Murenzi Chrysologue.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA.

Kumenya niba SOPEM yari umuburanyi mu rubanza RSOC0002/14/TGI/NGOMA&RSOC0007/14/TGI/NGOMA ku buryo Rushomintwari atashoboraga kurutambamira.

[7] Ikibazo kigomba gusuzumwa muri ubu bujurire ari nacyo cyaciriweho urubanza rwajuririwe, ni ukumenya niba SOPEM yarabaye umuburanyi mu rubanza RSOC 0002/14/TGI/NGOMA, bikaba byatuma Rushomintwali atarutambamira bitewe nuko yari ahagarariwe nk'umunyamigabane wa SOPEM, ibindi bibazo abajuriye bagaragaza bitarebana n'urubanza rwajuririwe bikaba bitasuzumwa ubu.

[8] Me Murutasibe uhagarariye Rushomintwali avuga ko Urukiko Rukuru rwemeje ko SOPEM yabaye umuburanyi mu rubanza RSOC0002/14/TGI/NGOMA & RSOC0007/14/TGI/NGOMA kandi ibyo atari ukuri, kuko icyabaye aruko SOPEM yabajijwe muri urwo rubanza "*à titre d'information*" kandi itahamagawe n'Umucamanza kuko ari umwanditsi w'Urukiko wayihamagaje. Avuga kandi ko urubanza rusobanura urundi (RSOC0007/14/TGI/NGOMA) rwemeje ko SOPEM itari ihagarariwe.

[9] Akomeza avuga ko Urukiko Rukuru rwemeje ko inyungu za Rushomintwali n'iza SOPEM ari zimwe, kandi nyamara iyo ziba zimwe, atari kuba yarareze SOPEM mu rubanza RCOM0153/12/HCC, kutagira inyungu zimwe kandi bikaba bishimangirwa na *registre de commerce* na *statuts* za SOPEM.

[10] Me Gashagaza Philbert nawe avuga ko, hashingiwe ku ngingo ya 224 y'Itegeko ryerekeye amasosiyete, basanga Rushomintwali yari afite uburenganzira bwo gutambamira urubanza rwavuzwe haruguru.

[11] Avuga kandi ko impamvu z'igoboka rya Mugisha Juliet nawe ahagarariye, zidatandukanye n'iza Rushomintwali, agasobanura ko Me Rwakayija John uvugwa ko yari ahagarariye SOPEM mu rubanza rwerekeranye n'inyandiko y'ikibazo gitanzwe n'umuburanyi umwe (requête unilatérale) yavuze ko yasanze atari ngombwa kuburana urwo rubanza, Urukiko rukaba rukwiye no kureba niba ikirego cyari guhabwa ishingiro, kuko asanga ikirego cyari gutangwa mu buryo busanzwe kubera imiterere y'urubanza.

[12] Me Gashirabake uhagarariye Munyanganzo avuga ko, kuba SOPEM yarabaye umuburanyi mu rubanza rwavuzwe, byumvikanisha ko na Rushomintwali yari ahagarariwe nk'umunyamigabane, akaba asanga, hashingiwe ku ngingo ya 176 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko umuntu ushobora gutambamira urubanza ari utararubayemo umuburanyi cyangwa ngo aruhagararirwemo, Rushomintwali ataba mu rubanza hashingiwe nanone ku biteganywa n'ingingo ya 2 y'iryo Tegeko kuko nta nyungu yaba afite. Naho ibyuko urubanza rwasobanuraga urundi rwari rugamije gusobanura ko SOPEM itari ihagarariwe akaba atari ukuri, kuko urwo rubanza rwemeza ko SOPEM itigeze igoboka.

[13] Akomeza avuga ko SOPEM yahamagawe ikitaba mu rubanza RSOC0002/14/TGI/NGOMA, irubamo umuburanyi hashingiwe ku biteganywa n'ingingo ya 327 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, Me Rwakayija John wari uyihagarariye mu iburanisha ry'urwo rubanza yemera ko Niyonzima na Munyanganzo bahabwa amafaranga yabo nta yandi mananiza.

[14] Me Gashema Félicien uhagarariye Niyonzima avuga ko SOPEM yamenye urubanza iruhamagawemo, bivuze ko yashoboraga kurujuririra cyangwa kurutambamira, ko kandi iyo isosiyete imenye urubanza, n'abanyamigabane bayo baba barumenye, umunyamigabane ubonye inyungu ze zibangamiwe akaba adashobora gutambamira icyemezo cyafatiwe sosiyete. Asanga kandi, kimwe na Rushomintwali, Mugisha na Ngarambe nabo bari bahagarariwe na SOPEM ku buryo batashoboraga kugoboka.

[15] Me Mihigo Bienvenue uhagarariye Ngarambe, avuga ko nawe yemera ko SOPEM itigeze iba umuburanyi, kuko Me Rwakayija wagiye mu rubanza yavuze ko ahari *"à titre d'information*", akaba asanga haragombaga gukurikizwa iburanisha ry'imanza (procedure) risanzwe, aho kuba "*requête unilatérale*".

[16] Me Murenzi Chrysologue uhagarariye SOPEM, avuga ko itigeze iba umuburanyi mu rubanza ruvugwa; ko niba Me Rwakayija John yaraje mu rubanza, asanga ariwe wabyisobanurira, icyo yemera akaba aruko SOPEM yarujemo “à titre d’information”. Avuga kandi ko nta cyihutirwaga (urgence) ku buryo hagombaga gutangwa ikirego gitanzwe n’umuburanyi umwe, kuko mu ngingo ya 3 ya “repossession agreement”, ivuga ko inyungu z’abakozi ba SOPEM zigomba kuzitabwaho, akaba yibaza impamvu Munyanganzo na Niyonzima bahisemo gukoresha iriya nzira. Ku byerekeranye nuko Rushomintwali yaba yari afite uburenganzira bwo gutambamira urubanza, asanga yari abufite kuko ari umunyamigabane muri SOPEM.

UKO URUKIKO RUBIBONA.

[17] Dosiye igaragaza ko mu rubanza (RSOC0002/14/TGI/NGOMA) rwaciwe ku kirego gitanzwe n’umuburanyi umwe, bigaragara ko nta muburanyi warezwe (d’office), ko ahubwo Umucamanza yasanze SOPEM igomba kumvwa ihagarariwe na Me Rwakayija John. Bigaragara kandi ko mu rubanza RSOC0007/14/TGI/NGOMA rukosora urumaze kuvugwa, aho Munyanganzo na Niyonzima basabaga ko hemezwa ko SOPEM yagobotse mu rubanza RSOC0002/14/TGI/NGOMA, Umucamanza yarasobanuye ko SOPEM itigeze igoboka mu rubanza, ko Me Rwakayija yabajijwe *à titre d’information*, ko atabajijwe nk’umuburanyi.

[18] Kuba Umucamanza yarasanze SOPEM igomba kumvwa,Urukiko rurasanga bitafatwa ko yahamagawe nk’umuburanyi mu buryo buteganywa n’ingingo ya 28 n’izikurikira z’Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryibukijwe, zirebana n’ihamagarwa ry’ababuranyi, cyane cyane ko n’abari batanze ikirego basabaga ko hemezwa ko SOPEM yagobotse, byumvikanisha ko bashakaga ko hasobanurwa uburyo yaje mu rubanza, kandi Umucamanza akaba yarasanze itaragobotse cyangwa ngo iregwe, bityo ibyo Urukiko Rukuru rwemeje ko SOPEM yatumijwe mu rubanza ikanahagararirwa bikaba bitahabwa ishingiro kubera ibimaze kugaragazwa.

[19] Urukiko rurasanga rero, kuba SOPEM itarabaye umuburanyi mu rubanza RSOC0002/14/TGI/NGOMA, nta cyari kubuza Rushomintwali kurutambamira hashingiwe ku biteganywa n’ingingo ya 176 y’Itegeko ryavuzwe, akaba kandi afite inyungu kuko amafaranga munyanganzo na Niyonzima bari bagenewe n’urwo rubanza, yagombaga kuvanwa mu yo abanyamigabane bagombaga kugabana, Rushomintwali akaba umwe muri bo, kuko no mu kirego batanze basobanuye ko bahabwa ayo mafaranga mbere yuko abanyamigabane bagabana. Ibyerekeranye no gutambamira icyemezo cy’umucamanza kandi, by’umwihariko ku byerekeranye n’uru rubanza, binateganywa n’ingingo ya 330 y’iryo Tegeko.

[20] Urukiko rurasanga rero, kuba icyemezo cy’Urukiko Rukuru kigomba guhinduka ku birebana n’itambama rya Rushomintwali, urubanza rugomba kuburanishwa ku bijyanye n’izindi mpamvu z’ubujurire zari zaratanzwe na Munyanganzo na Niyonzima muri urwo Rukiko, ariko zigasuzumwa n’uru Rukiko hashingiwe ku biteganywa n’ingingo ya 171 y’Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, n’izindi ndishyi zasabwe n’ababuranyi kuri uru rwego akaba aribwo zizasuzumwa.

III. ICYEMEZO CY’URUKIKO.

[21] Rwemeje ko ubujurire bwa Rushomintwali Sylvestre bufite ishingiro;

[22] Rwemeje ko imikirize y'urubanza RSOCA0009/14/HC/RWG rwaciwe kuwa 26/11/2014 ihindutse;

[23] Ruvuze ko iburanisha ry'urubanza rizakomeza kuwa 22/06/2017 kugira ngo hasuzumwe izindi mpamvu Munyanganzo na Niyonzima bari batanze mu Rukiko Rukuru, hanasuzumwe indishyi zasabwe n'ababuranyi kuri uru rwego;

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