UBUSHINJACYAHA v. MAYOBERE

[Rwanda URUKIKO RW'IKIRENGA – RPAA0067/15/CS (Mukamulisa, P.J., Mukandamage na Muhumuza, J.) 18 Gicurasi 2018]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Icyaha cy'imaragihe – Igihe cy'ubusaze bw'ikirego cy'ikurikiranacyaha ku cyaha cy'imaragihe, gitangira kubarwa ku munsi igikorwa cya nyuma kigize icyaha cyarangiriyeho – Itegeko N°30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 6 igika cya 3.

Incamake y'ikibazo: Ubushinjacyaha bwakuricyiranye Mayobere mu Rukiko Rwisumbuye rwa Rubavu, ku cyaha cyo gukora no gukoresha inyandiko mpimbano, buvuga ko nyuma y'uko ababyeyi be baguze umurima n'uwitwa Sinumvayabo n'umugore we Nyiramatama, bakamubitsa inyandiko y'ubugure. Aho se apfiriye, yaje kurigisa iyo nyandiko, ahubwo yiyandikira indi igaragaza ko ariwe waguze uwo murima ku wa 23/09/1975. Muri urwo rubanza umuvandimwe wa Mayobere witwa Samvura yaregeye indishyi. Urwo rukiko rwaciye urubanza, rwemeza ko Mayobere adahamwa n'icyaha cyo gukora no gukoresha inyandiko mpimbano.

Ubushinjacyaha n'uwaregeye indishyi ntibishimiye imikirize y'urubanza maze bajuririra Urukiko Rukuru, Urugereko rwa Musanze. Urwo Rukiko rwemeje ko Mayobere ahamwa n'icyaha akurikiranyweho cyo gukora no gukoresha inyandiko mpimbano, rumuhanisha igifungo cy'imyaka itandatu (6) n'ihazabu ingana na 300.000Frw, rwemeza kandi ko imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ihindutse kuri byose, runamutegeka guha Samvura indishyi zinyuranye.

Uregwa yajuririye Urukiko rw'Ikirenga avuga ko umucamanza mu Rukiko Rukuru yashingiye ku itegeko ritariho igihe icyaha cyakorwaga kuberako hashingiwe ku itegeko Ngenga Nº 01/2012/OL rishyiraho igitabo cy'amategeko ahana ryo muri 2012 ritari ririho nyamara inyandiko yaregwaga ariyo kuwa 29/02/1975 akavugako hagombaga gukurikizwa igitabo cy'amategeko ahana cyo mu gihe cy'abakoloni (Iteka ryo kuwa 3 Mutarama 1940), cyakurikizwaga icyo gihe. Yongeraho ko icyaha yaregwaga cyashaje.

Ubushinjacyaha bwo bwagaragazaga ko mbere yo gusuzuma impamvu z'ubujurire habanza gusuzumwa ibijyanye n' ububasha bw'Urukiko rw'Ikirenga kuko ari ubujurire bwa kabiri, ko busanga butari mu bubasha bw'uru Rukiko harebwe igihano Mayobere yahawe. Ubushinjacyaha kandi bwanasubije ku mpamvu z'ubujurire bw'uregwa bukagaragaza ko nta kosa umucamanza yakoze kuberako inyandiko Mayobere yaregwaga yayikoresheje bwa nyuma mu rubanza RC0069/2013/2013 yaburanaga na Samvura rukaba rwaraciwe kuwa 19/07/2013 kandi icyo gihe kikaba ari icya nyuma y'ubukoroni ko ndetse itegeko rihana ibyaha ryakurikizwaga ariryo muri 2012.

Incamake y'icyemezo: 1. Inyandiko Mayobere aregwa gukora no gukoresha yatangiye kuyikoresha muri 2011, anayikoresha nk'ikimenyetso mu rubanza RC0069/2013/TB/NYBA rwaciwe kuwa 19/07/2013 n'Urukiko rw'Ibanze rwa Nyakiliba bityo Urukiko Rukuru mu guca urubanza ntirwashingiye ku itegeko ritariho.

2. Igihe cy'ubusaze bw'ikirego cy'ikurikiranacyaha ku cyaha cy'imaragihe, gitangira kubarwa ku munsi igikorwa cya nyuma kigize icyaha cyarangiriyeho. Bityo kuko icyaha uregwa yakoze ari icyaha

cy’imaragihe, niyo mpamvu hashingiwe ku Itegeko Ngenga Nº01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy’amategeko ahana ryariho igihe igikorwa cya nyuma kigize icyaha cyakorewe.

3. Urukiko Rukuru, urugereko rwa Musanze rwaciye urubanza ruri mu bubasha bwarwo kuko rwaburanishije ubujurire bw’urubanza rwaciwe ku rwego rwa mbere n’Urukiko Rwisumbuye rwa Rubavu.

Ubujurire ntiburi mu bubasha bw’Urukiko rw’Ikirenga;
Amagarama y’urubanza aherereye k’uregwa.

Amategeko yashingiweho:

Itegeko Ngenga Nº03/2012/OL ryo kuwa 13/06/2012, rigena imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga, ingingo ya 28 (2º).

Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008, rigena imiterere, imikorere n’ububasha by’inkiko nkuko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 105.

Itegeko Nº30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 6 igika cya 3.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Mayobere Jean Baptiste, icyaha cyo gukora no gukoresha inyandiko mpimbano, bukavuga ko yabikoze nyuma y’uko ababyeyi be baguze umurima n’uwitwa Sinumvayabo n’umugore we Nyiramatama, inyandiko bawuguriyeho bayibikije umwana wabo Mayobere Jean Baptiste. Buvuga ko aho Semahundo apfiriye, Mayobere yaje kurigisa ya nyandiko, ahubwo yiyandikira indi igaragaza ko ariwe waguze uriya murima ku wa 23/09/1975. Umuvandimwe wa Mayobere J. Baptiste witwa Samvura Joseph yaregeye indishyi muri urwo rubanza. Urukiko Rwisumbuye rwa Rubavu rwaciye urubanza, rwemeza ko Mayobere Jean Baptiste adahamwa n’icyaha cyo gukora no gukoresha inyandiko mpimbano, rumugira umwere.

[2] Ubushinjacyaha na Samvura Joseph waregeye indishyi, ntibishimiye imikirize y’urubanza, bajuririra Urukiko Rukuru, Urugereko rwa Musanze. Urwo Rukiko rwaciye urubanza, rwemeza ko Mayobere Jean Baptiste ahamwa n’icyaha akurikiranyweho cyo gukora no gukoresha inyandiko mpimbano, rumuhanisha igifungo cy’imyaka itandatu (6) n’ihazabu ingana na 300.000Frw, rwemeza kandi ko imikirize y’urubanza RP0018/14/TGI/RBV rwaciwe n’Urukiko Rwisumbuye rwa Rubavu ihindutse kuri byose. Rwanategetse Mayobere J. Baptiste guha Samvura Joseph indishyi zingana na

500.000Frw, n'igihembo cya Avoka wamuburaniye kingana na 500.000Frw, akanamusubiza 125.000Frw y'amagarama yatanze.

[3] Mayobere Jean Baptiste yajuririye Urukiko rw'Ikirenga, avuga ko mu guca urubanza umucamanza yashingiye ku Itegeko ritariho igihe icyaha cyakorwaga, ko ndetse urukiko Rukuru rwaciye urubanza rutari rufitiye ububasha.

[4] Urubanza rwaburanishijwe ku wa 26/03/2018 Mayobere J. Baptiste yunganiwe na Me Mberabagabo B. Richard, Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice, Samvura Joseph yunganiwe na Me Tugirimana Vincent. Mbere yo gusuzuma impamvu z'ubujurire, Urukiko rwabanje gusuzuma inzitizi yatanzwe n'Ubushinjacyaha y'uko ubujurire butari mu bubasha bw'Urukiko rw'Ikirenga.

II.IBIBAZO BIGIZE URUBANZA N'ISESENGURA BYABYO

Kumenya niba ubujurire bwa kabiri buri mu bubasha bw'Urukiko rw'Ikirenga

a. Ku bijyanye no kuba urubanza rwaraciwe hashingiwe ku itegeko ritariho

[5] Uhagarariye Ubushinjacyaha avuga ko mbere yo gusuzuma impamvu z'ubujurire, Urukiko rwabanza gusuzuma ibijyanye n'ububasha bw'Urukiko rw'Ikirenga, kuko ubu ari ubujurire bwa kabiri akaba asanga butari mu bubasha bw'uru Rukiko harebwe igihano Mayobere J. Batiste yahawe.

[6] Uhagarariye Ubushinjacyaha anasubiza ku bivugwa na Mayobere J. Baptiste n'umwunganira, ko Umucamanza waciye urubanza ajuririra, yashingiye ku itegeko ritariho igihe icyaha cyakorwaga, kubera ko inyandiko aregwa yakozwe ku wa 23/09/1975, ariko mu guca urubanza, uwo Mucamanza ashingira ku ngingo ya 609 y'Itegeko Ngenga Nº01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana, nyamara hari hakwiye gukoreshwa ingingo ya 124 y'Igitabo cy'amategeko ahana cyo mu gihe cy'abakoloni yakoreshwaga icyo gihe inyandiko ikorwa.

[7] Muri urwo rwego avuga ko hakurikijwe ibiteganywa n'ingingo ya 6, igika cya 4, y'Itegeko Nº30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, bigaragara ko ibyo Mayobere J. Baptiste n'umwunganira bavuga bijyanye n'Itegeko ryagombaga gukurikizwa atari byo, kubera ko ubwa nyuma Mayobere J. Baptiste yakoresheje inyandiko aregwa, ari mu rubanza RC0069/2013/TB/NYAB yaburanye na Samvura Joseph, rukaba rwaraciwe ku wa 19/07/2013, kandi icyo gihe kikaba ari icya nyuma y'ubukoloni, ndetse itegeko rihana ibyaha ryakurikizwaga akaba ari iryo muri 2012, ko rero nta kosa Umucamanza yakoze.

[8] Anongeraho ko iyo uhuje ibimaze kuvugwa haruguru n'ibiteganywa n'Ingingo ya 28, agace ka kabiri, y'Itegeko Ngenga Nº03/2012OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, usanga iyi ngingo idaha Mayobere J. Baptiste uburenganzira bwo kujurira kubera ko yahanishijwe igihano kiri munsi y'igiteganywa n'Itegeko Ngenga ryavuzwe, ndetse ko Ubushinjacyaha bwagaragaje ko icyaha akurikiranyweho kitigeze gisaza.

[9] Me Tugirimana Vincent wunganira Samvura Joseph, avuga ko uyu yatanze inzitizi nawe yo kutakira ubujurire bwa kabiri bwa Mayobere J. Baptiste kuko bunyuranyije n'ibiteganywa n'ingingo ya 28, igika cya 2, y'Itegeko Ngenga Nº03/2012OL ryo kuwa 13/06/2012 rimaze kuvugwa haruguru, kubera ko ubujurire bwakirwa, iyo uregwa yakatiwe igifungo cy'imyaka iri hejuru y'icumi, nyamara

Mayobere J. Baptiste akaba yarakatiwe imyaka itandatu (6*ans*), akaba rero ataragombaga kujuririra Urukiko rw'Ikirenga.

[10] Avuga kandi ko ibyo kuvuga ko ikirego cyashaje nta shingiro bifite kubera ko ingingo ya 6 y'Itegeko Nº30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko ibyaha by'imaragihe ubusaze bitangira kubarwa guhera igihe igikorwa cya nyuma kigize icyaha cyakorewe, ni ukuvuga mu mwaka wa 2013, kuko Mayobere yatangiye gukoresha inyandiko aregwa muri 2011, ndetse arongera ayikoresha mu rubanza ku ifunga n'ifungurwa ry'agateganyo, bigaragara ko gukoresha iyo nyandiko bitahagaze, bityo n'icyaha kikaba kitarigeze gisaza.

[11] Me Mberabagabo B. Richard wunganira Mayobere J. Baptiste avuga ko inyandiko Ubushinjacyaha buvuga ko yakoreshejwe bwa nyuma ku wa 19/07/2013 mu rubanza RC0069/2013/TB/NYAB, nyamara atari byo, kuko Ubushinjacyaha budashobora kugaragaza ibyo buvuga, ko ahubwo we n'uwo yunganira babona inyandiko yakoreshejwe mu rubanza nk'ikimenyetso ari iyo ku wa 29/02/1975, ari nayo Mayobera aregwa n'ubwo we atemera ko hari inyandiko yahimbye cyane cyane ko atanayireguyeho. Anavuga ko inyandiko bemera ko ari iyo ku wa 23/09/1975 Mayobere yaguriyeho umurima.

[12] Avuga kandi ko hashingiwe ku biteganywa n'ingingo ya 28 y'Itegeko Ngenga Nº03/2012OL ryavuzwe haruguru, impamvu bashingiraho ubujurire ari iyo kuba Urukiko rwarashingiye ku Itegeko ritari ririho igihe icyaha aregwa cyakorwaga, agashimangira ko hagombaga gushingirwa ku ngingo ya 124 y'Igitabo cy'amategeko ahana cyo mu gihe cy'abakoloni (Décret du 3 Janvier 1940), cyakurikizwaga icyo gihe. Anavuga ko kuba Umucamanza yarashingiye ku ngingo ya 609 y'Itegeko Ngenga Nº01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana ari byo bibatera kwemeza ko uwo Mucamanza yashingiye ku Itegeko ritariho, ndetse ko icyaha Mayobere J. Baptiste aregwa ubu cyashaje.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 28, agace ka kabiri, y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga iteganya ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, iyo izo manza zashingiye ku Itegeko ritariho cyangwa ingingo z'amategeko zitariho cyangwa zaciwe n'Urukiko rutabifitiye ububasha.

[14] Urukiko rusanga ibyo Mayobere J. Baptiste avuga ko Urukiko Rukuru, urugereko rwa Musanze, mu guca urubanza ajuririra, rwashingiye ku Itegeko ritariho, nta gaciro byahabwa mu gihe bigaragara ko inyandiko aregwa gukora no gukoresha yatangiye kuyikoresha muri 2011, ubwo yaburanaga na nyina Bashimiki, mu rwego rw'Abunzi, akaba adahakana ko yongeye no kuyikoresha nk'ikimenyetso mu rubanza ubwo yaburanaga na Samvura Joseph mu rubanza RC0069/2013/TB/NYBA rwaciwe kuwa 19/07/2013 n'Urukiko rw'Ibanze rwa Nyakiliba.

[15] Urukiko rusanga kandi icyaha Mayobere J.Baptiste yakoze ari icyaha cy'imaragihe, giteganywa mu ngingo ya 6, igika cya 3, y'Itegeko Nº30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ivuga ko igihe cy'ubusaze bw'ikirego cy'ikurikiranacyaha, gitangira kubarwa ku munsi igikorwa cya nyuma kigize icyaha cyarangiriyeho, ni ukuvuga muri 2013 nk'uko byibukijwe haruguru, icyo akaba ari cyo cyatumye Urukiko Rukuru, urugereko rwa Musanze, mu guca urubanza,

rwarashingiye ku Itegeko Ngenga Nº01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryariho igihe igikorwa cya nyuma kigize icyaha cyakorewe, bikaba biboneka ko icyaha kitashaje. Uru Rukiko rusanga rero nta kosa Urukiko Rukuru, urugereko rwa Musanze rwakoze.

b. Ku bijyanye no kumenya niba urubanza rwaraciwe n'Urukiko rutabifitiye ububasha

[16] Me Mberabagabo B. Richard avuga ko Urukiko Rukuru, urugereko rwa Musanze rwaciye urubanza rudafitiye ububasha, kuko rwirengagije ingingo ya 60 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 kamena 2003 nk'uko ryavuguruwe kugeza ubu, aho isobanura inzego eshatu z'ubutegetsi bwa Leta, ikanagaragaza ko zitandukanye kandi zuzuzanya. Anasanga ibiteganywa n'ingingo ya 21, igika cya 2, y'Itegeko ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha aho igaragaza ko Ubugenzacyaha ari bwo bushinzwe gukora iperereza mu rwego rwa mbere, ko rero umucamanza atubahirije izo ngingo zose kandi arizo zigaragaza ububasha n'inshingano za buri rwego, dore ko Mayobere yahamijwe icyaha hashingiwe ku nyandiko atigeze yireguraho mu Bugenzacyaha.

[17] Uhagarariye Ubushinjacyaha avuga ko n'ubwo Mayobere J. Baptiste yajuriye avuga ko Urukiko Rukuru, urugereko rwa Musanze rwaciye urubanza rudafitiye ububasha, ibyo avuga atari byo, kuko haba ububasha bushingiye ku ifasi ndetse n'ububasha bushingiye ku kiburanwa, Urukiko Rukuru, urugereko rwa Musanze, rwari rubufite kuko rwaburanishije ubujurire bwa mbere ku rubanza mu mizi rwari rwaraciwe n'Urukiko Rwisumbuye rwa Rubavu, ibi bakabivuga bashingiye ku biteganywa n'ingingo ya 105 ya y'Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko.

[18] Me Tugirimana Vincent wunganira Samvura Joseph avuga ko Urukiko Rukuru, urugereko rwa Musanze rwaciye urubanza rwari rubifitiye ububasha kuko bwari ubujurire bw'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku rwego rwa mbere.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 28, agace ka kabiri, y'Itegeko Ngenga Nº03/2012/OL ryo kuwa 13/06/2012 ryibukijwe haruguru, iteganya ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru iyo izo manza (……) zaciwe n'Urukiko rutabifitiye ububasha.

[20] Impamvu z'ingenzi zatumye Mayobere J. Baptiste ajuririra urubanza rwaciwe ku rwego rwa kabiri n'Urukiko Rukuru, urugereko rwa Musanze, ni uko avuga ko urubanza ajuririra rwaciwe hashingiwe ku itegeko ritariho, ko kandi Urukiko Rukuru, urugereko rwa Musanze, rwaciye urubanza rutari rufitiye ububasha.

[21] Urukiko rusanga ibyo Mayobere J. Batiste avuga ko Urukiko Rukuru, urugereko rwa Musanze, rwaciye urubanza rudafitiye ububasha, atari ukuri, kubera ko urwo Rukiko rwaburanishije ubujurire bw'urubanza rwaciwe ku rwego rwa mbere n'Urukiko Rwisumbuye rwa Rubavu, nk'uko binateganywa n'ingingo ya 105 y'Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, aho ivuga ko Urukiko Rukuru ruburanisha imanza z'inshinjabyaha zajuririwe zaciwe n'Urukiko Rwisumbuye ku rwego rwa mbere.

[22] Urukiko rusanga rero Urukiko Rukuru, urugereko rwa Musanze rwaraciye urubanza ruri mu bubasha bwarwo, ingingo y'ubujurire ya Mayobere J. Baptiste ikaba nta shingiro ifite.

[23] Nyuma y'ibisobanuro byatanzwe haruguru, Urukiko rusanga ubujurire bwa kabiri Mayobere J. Baptiste yatanze mu Rukiko rw'Ikirenga butari mu bubasha bwarwo.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko ubujurire bwatanzwe na Mayobere J. Baptiste butari mu bubasha bw'Urukiko rw'Ikirenga;

[25] Rwemeje ko imikirize y'urubanza RPA0181/14/HC/MUS rwaciwe ku wa 27/02/2015 n'Urukiko Rukuru, urugereko rwa Musanze, idahindutse;

[26] Rutegetse Mayobere Jean Baptiste gutanga amagarama y'uru rubanza.