Re MUGISHA

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC00002/2018/SC (Rugege, P.J., Kayitesi Z, Mutashya, Kayitesi R na Cyanzayire, J.) 18 Mutarama 2019]

Itegeko Nshinga – Amategeko anyuranyije n'Itegeko Nshinga – Uruhare rwa Leta mu manza zirebana n'ibirego bisaba gukuraho itegeko rinyuranije n'Itegeko Nshinga – Leta ntabwo iza mu manza zisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga ngo umuburanyi ahubwo iza kugaragaza aho ihagaze ku myumvire y'itegeko risabirwa kuvanwaho, bityo ntabwo Leta ishobora gutanga inzitizi yo kutakira ikirego nk'umuburanyi.

Itegeko Nshinga – Amategeko anyuranyije n'Itegeko Nshinga – Inyungu zo gutanga ikirego – Mu manza zisaba gukuraho itegeko rinyuranye n'Itegeko Nshinga, umuburanyi ashobora gusaba ko itegeko rivaho agamije kurengera inyungu rusange za rubanda bitabaye ngombwa kugaragaza inyungu bwite abifitemo.

Incamake y'ikibazo: Nyuma y'uko hatangajwe mu Igazeti ya Leta Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Me Mugisha yatanze ikirego mu Rukiko rw'Ikirenga asaba urwo Rukiko kwemeza ko ingingo ya 233, 236, 136, 138, 154 n'iya 139 ziryo tegeko zinyuranije n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo zaryo za 15, 18 na 38. Akomeza avuga ko izo ngingo zisabirwa kuvanwaho ziri mu byiciro bibiri: icyiciro cya mbere kigizwe n'ingingo eshatu, iya 154, 233 n'iya 236 naho icyiciro cya kabiri nacyo kikaba kigizwe n'ingingo eshatu iya 136,138 n'iya 139.

Mw'iburanisha ry'urubanza intumwa ya Leta yatanze inzitizi yo kutakira ikirego ku mpamvu z'uko uwatanze ikirego nta nyungu afite zo kugitanga, ko atagaragaza inyungu ze bwite afite mu kirego, cyane cyane ko atigeze agaragaza aho izo ngingo zaba zimubangamiye. Asobanura ko ingingo ya 3 y'Itegeko rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ikirego kidashobora kwakirwa mu gihe urega adafite inyungu n'ubushobozi, ariyo mpamvu uwatanze ikirego yagombye kugaragaza inyungu afite muri uru rubanza, nko kwerekana uburyo ziriya ngingo zimubangamiye, niba yaba yarahanwe hashingiwe kuri izo ngingo aho kugaragaza ko zibangamiye abanyamakuru, cyangwa se ko zibangamiye abashakanye, Intumwa ya Leta ikomeza ivuga ko kandi atagaragaza ko ahagarariye ababangamiwe n'izo ngingo, yongeraho ko hashingiwe ku ngingo ya 72 y'Itegeko rigena ububasha bw'Inkiko iteganya ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko Itegeko rinyuranyije n'Itegeko Nshinga iyo abifitemo inyungu, kandi ko inyungu igomba kuba igaragarira buri wese atari ukugenekereza, Intumwa ya Leta isoza ivuga ko kuvuga ko ikirego cyatanzwe mu nyungu za rubanda atariko biri, kuko itegeko rivuga ubifitemo inyungu.

Uwatanze ikirego yiregura kuriyo nzitizi avuga ko Itegeko rigena ububasha bw'inkiko riteganya ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko Itegeko rinyuranyije n'Itegeko Nshinga. Bityo ashingiye no ku kuba ari ku rutonde rw'abavoka mu Rwanda, yumva afite uruhare mu ishyirwaho ry'amategeko anoze kandi atanyuranyije n'Itegeko Nshinga kandi ko umunyarwanda uwo ariwe wese afite inyungu zo kurengera Itegeko Nshinga n'iyubahirizwa ryaryo, ndetse no kuba yareba niba amategeko atorwa atanga ubutabera bunoze cyane cyane ko ibyo asaba ko bisuzumwa ari inyungu rusange, kuko bireba umunyarwanda wese.

Mbere yo gusuzuma ibirebana n'inyungu z'uwatanze ikirego Urukiko rwabanje gusuzuma niba Leta ishobora gutanga inzitizi yo kutakira ikirego mu manza zisaba kwemeza ko itegeko rinyuranye n'Itegeko Nshinga.

Incamake y'icyemezo: 1. Leta ntabwo iza mu manza zisaba gukuraho itegeko rinyuranyije n'Itegeko Nshinga nk'umuburanyi ahubwo iza kugaragaza aho ihagaze ku myumvire y'itegeko risabirwa kuvanwaho, bityo ntabwo Leta ishobora gutanga inzitizi yo kutakira ikirego nk'umuburanyi.

2. Mu manza zisaba gukuraho itegeko rinyuranye n'Itegeko Nshinga, umuburanyi ashobora gusaba ko itegeko rivaho agamije kurengera inyungu rusange za rubanda bitabaye ngombwa kugaragaza inyungu bwite abifitemo.

Uwatanze ikirego afite inyungu yo gutanga ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga.
Iburanishwa ry'uru rubanza rizakomeza.

Amategeko yashingiweho:
Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 72 niya 80.
Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3.

Imanza zifashishijwe:
Zantsi v Council of State, Ciskei and Others (CCT24/94) [1995] ZACC 9; 1995 (4) SA 615 (CC); 1995 (10) BCLR 1424 (CC) rendered on 22 September 1995 by the Constitutional Court of South Africa
Klass and others v Federal Republic of Germany, (Series A, NO 28) (1979-80) 2 EHRR 214, rendered on 6 September 1978 by the European Court of Human Rights.
Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others (CCT5/95) [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 rendered on 6 December 1995 by the Constitutional Court of South Africa.
Minister of Home Affairs v Eisenberg & Associates, (CCT15/03) [2003] ZACC 10; 2003 (8) BCLR 838; 2003 (5) SA 281 rendered on 27 June 2003 by the Constitutional Court of South Africa
Kruger v President of the Republic of South Africa and Others (CCT 57/07) [2008] ZACC 17; 2009 (1) SA 417 (CC); 2009 (3) BCLR 268 (CC) rendered on 2 October 2008 by the by the Constitutional Court of South Africa.

Ibitekerezo by'abahanga byifashishijwe:
Serge Guinchard et Thierry Debard, Lexique des termes juridiques 2015-2016, 23e éd, Dalloz, 2015.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Me Mugisha Richard yatanze ikirego mu Rukiko rw'Ikirenga avuga ko nyuma y'uko hatangajwe mu Igazeti ya Leta Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, yarisomye agasanga ingingo za 136, 138, 139, 154, 233 n'iya 236 z'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, zinyuranije n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe mu mwaka wa 2015.

[2] Ingingo zisabirwa kuvanwaho kuko zinyuranyije n'Itegeko Nshinga ni esheshatu (6) ziri mu byiciro bibiri: icyiciro cya mbere kigizwe n'ingingo eshatu (3): iya 154, 233 n'iya 236. Ingingo ya 154 iteganya ko umuntu wese usebya mu ruhame imihango y'idini, ibimenyetso byaryo n'ibikoresho by'imihango yaryo akoresheje ibikorwa, amagambo, ibimenyetso, inyandiko, amarenga cyangwa ibikangisho abigiriye aho imihango y'idini igenewe gukorerwa cyangwa isanzwe ikorerwa, aba akoze

icyaha. Iya 233 iteganya ko umuntu wese ukoza isoni mu magambo, mu bimenyetso cyangwa ibikangisho, inyandiko cyangwa ibishushanyo, umwe mu bagize Inteko Ishinga Amategeko mu gihe akora umurimo yatorewe cyangwa biturutse kuri uwo murimo, umwe mu bagize Guverinoma, abashinzwe umutekano cyangwa undi wese ushinzwe umurimo rusange w'Igihugu mu gihe akora umurimo ashinzwe cyangwa ari wo biturutseho, aba akoze icyaha. Naho iya 236 igateganya ko umuntu wese utuka cyangwa usebya Perezida wa Repubulika, aba akoze icyaha. Izi ngingo zinateganya ibihano kuri buri cyaha.

[3] Me Mugisha Richard avuga ko izo ngingo zinyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, kuko zirengera ababarirwa mu byiciro bimwe hashingiwe ku mirimo bakora, kandi abantu bose bareshya imbere y'amategeko[1]. Anavuga ko izo ngingo zibangamiye ubwisanzure bw'Itangazamakuru, ryaba iryandika, ryaba irikoresha ibishushanyo ndetse n'amagambo, buteganywa n'ingingo ya 38 y'Itegeko Nshinga[2], kuko hashingiwe ku biteganywa n'izo ngingo, Itangazamakuru ritemerewe kugira icyo ritangaza kuri ibyo byiciro by'abayobozi cyangwa amadini mu buryo bwo kunenga ibi n'ibi, kandi iyo ngingo iteganya ko ubwisanzure bw'Itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru bwemewe kandi bwubahirizwa na Leta.

[4] Icyiciro cya kabiri kigizwe n'ingingo eshatu (3): iya 136 iteganya ko umuntu wese washyingiwe ukorana imibonano mpuzabitsina n'uwo batashyingiranywe, aba akoze icyaha. Iya 138 iteganya ko umuntu ubana nk'umugabo n'umugore n'uwo batashyingiranywe umwe muri bo cyangwa bombi bafite uwo bashyingiranywe, aba akoze icyaha. Naho iya 139 iteganya ko umwe mu bashyingiranywe uta urugo rwe mu gihe kirenze amezi abiri (2) nta mpamvu zikomeye akihunza ibyo ategetswe, aba akoze icyaha. Me Mugisha Richard asanga izi ngingo zinyuranye n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ko Leta ifite inshingano yo gushyiraho amategeko n'inzego bishinzwe kurengera umuryango kugira ngo ugire ubwisanzure, nyamara ingingo za 136, 138 n'iya 139 zikaba ziteganya igihano cy'igifungo kuri umwe mu bashakanye kandi umuryango udashobora kurengerwa cyangwa ngo ugire ubwisanzure mu gihe umwe mu bawugize yaba afunzwe.

[5] Iburanisha ry'urubanza ryabaye ku itariki ya 4/12/2018, Me Mugisha Richard yunganiwe na Me Nkundabarashi Moïse na Me Kabasinga Florida, naho Leta y'u Rwanda ihagarariwe n'Intumwa yayo, Me Kabibi Speciose.

[6] Me Kabibi Speciose yatanze inzitizi yo kutakira ikirego cyatanzwe na Me Mugisha Richard ku mpamvu z'uko nta nyungu afite zo kugitanga, ko atagaragaza inyungu ze bwite afite mu kirego, cyane cyane ko atigeze agaragaza aho izo ngingo zaba zimubangamiye.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba ikirego cyatanzwe na Me Mugisha Richard kitakwakirwa biturutse ku kuba nta nyungu afite

[7] Me Kabibi Speciose asaba ko ikirego cyatanzwe na Me Mugisha Richard kitakwakirwa bitewe n'uko nta nyungu afite muri uru rubanza, ko mu gutanga ikirego atigeze agaragaza aho ingingo asabira kuvanwaho zaba zaramubangamiye. Asobanura ko ingingo ya 3 y'Itegeko rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ikirego kidashobora kwakirwa mu gihe urega adafite inyungu n'ubushobozi, ariyo mpamvu Mugisha Richard yagombye

[1] Ingingo ya 15 iteganya ko: "Abantu bose barareshya imbere y'amategeko. Itegeko ribarengera ku buryo bumwe".

[2] Ingingo ya 38 iteganya ko: "Ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buremewe kandi bwubahirizwa na Leta. Ubwisanzure bwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru ntibugomba kubangamira ituze rusange rya rubanda n'imyifatire mbonezabupfura, ukurengera urubyiruko n'abana, n'uburenganzira bw'umwenegihugu bwo kugira icyubahiro n'agaciro, ubwo kutagira uwivanga mu mibereho ye bwite n'iy'umuryango we. Uko ubwo bwisanzure bukoreshwa n'iyubahirizwa ryabwo biteganywa n'amategeko"

kugaragaza inyungu afite muri uru rubanza, nko kwerekana uburyo ziriya ngingo zimubangamiye, niba yaba yarahanwe hashingiwe kuri izo ngingo aho kugaragaza ko zibangamiye abanyamakuru, cyangwa se ko zibangamiye abashakanye, kandi atagaragaza ko ahagarariye ababangamiwe n'izo ngingo.

[8] Avuga ko hashingiwe ku ngingo ya 72 y'Itegeko rigena ububasha bw'Inkiko iteganya ko umuntu ku giti cye ashobora kuregera Urukiko rw'Ikirenga arusaba kwemeza ko Itegeko rinyuranyije n'Itegeko Nshinga iyo abifitemo inyungu, Mugisha Richard nka Avoka ufasha ubutabera ubwabyo bitafatwa nk'inyungu afite yatuma atanga ikirego cyane cyane ko inyungu igomba kuba igaragarira buri wese atari ukugenekereza, kandi ko kuvuga ko ari mu nyungu za bose atariko biri, kuko itegeko rivuga ubifitemo inyungu. Avuga ko imiterere y'ikirego cyatanzwe igaragaza ko kitagamije inyungu rusange, ahubwo ko yatanze ikirego ku giti cye, ariyo mpamvu agomba kugaragaza inyungu afite.

[9] Asoza avuga ko Me Mugisha Richard, nka Avoka niba yaranatanze ikirego mu izina rya bagenzi be yagombye kugaragaza ko abahagarariye, akagaragaza aho izo ngingo zababangamiye n'uburenganzira bavukijwe mu ishyirwa mu bikorwa ryazo.

[10] Me Mugisha Richard yiregura avuga ko ashingiye ku ngingo ya 72 y'Itegeko N°30/2018 ryo ku wa 02/06/2018, rigena ububasha bw'inkiko iteganya ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko Itegeko rinyuranyije n'Itegeko Nshinga, ashingiye no ku kuba ari ku rutonde rw'abavoka mu Rwanda, ufasha ubutabera, yumva afite uruhare mu ishyirwaho ry'amategeko anoze kandi atanyuranyije n'Itegeko Nshinga, ko aho ariho akomora inyungu zo kuregera urukiko arusaba kwemeza ko ingingo zagaragajwe zinyuranyije n'Itegeko Nshinga. Avuga kandi ko nk'umunyarwanda, afite inyungu mu guharanira ishyirwa mu bikorwa ry'Itegeko Nshinga haba uko ryanditse n'icyo rigamije.

[11] Akomeza avuga ko atari ngombwa gutegereza igihe ibyaha bizakorerwa kugira ngo ariho hatangwa ikirego, ko kuba hari ibibazo kandi abibona adashobora kurebera ikintu kibangamiye umuryango kandi bizagira ingaruka ku bantu bose nawe arimo. Avuga ko ibyo ari nako bimeze no ku banyamakuru, akaba afite inyungu zo gutanga ikirego mu gihe abona hari ibyabangamira imikorere myiza y'itangazamakuru.

[12] Me Nkundabarashi Moïse avuga ko umunyarwanda uwo ariwe wese afite inyungu zo kuregera Itegeko Nshinga n'iyubahirizwa ryaryo, ndetse no kuba yareba niba amategeko atorwa atanga ubutabera bunoze. Avuga ko by'umwihariko, kuba Me Mugisha Richard ari avoka, afite inyungu zo kugaragaza ko hari amategeko yatowe anyuranyije n'Itegeko Nshinga, kandi ko ibyo asaba ko bisuzumwa ari inyungu rusange, kuko bireba umunyarwanda wese, ariyo mpamvu abona iby'uhagarariye Leta avuga ko Avoka adafite inyungu, atari byo kuko inyungu zitagombye kugaragazwa n'uko habaye ibibazo, ahubwo ko byakabaye byiza habaye kubungabunga Itegeko Nshinga kugira ngo ritabangamirwa.

[13] Me Kabasinga Florida avuga ko Mugisha Richard afite inyungu bwite n'inyungu rusange zo gutanga ikirego kuko ingingo z'amategeko zisabirwa kuvaho zireba umuntu wese na Mugisha Richard arimo, ko buri muntu wese ashobora gukurikiranwaho ibyaha biteganywa n'ingingo zaregewe, ko rero Mugisha Richard afite inyungu, zo gutanga icyo kirego kugira ngo abe yarengera inyungu ze bwite n'iz'abandi izo ngingo zabangamira.

UKO URUKIKO RUBIBONA

A. Kumenya niba Leta ishobora gutanga inzitizi yo kutakira ikirego

[14] Mbere yo gusuzuma ibirebana n'inyungu z'uwatanze ikirego, Urukiko rurasanga ari ngombwa kumenya niba Leta ishobora gutanga inzitizi yo kutakira ikirego mu manza zisaba kwemeza ko itegeko rinyuranye n'Itegeko Nshinga.

[15] Ingingo ya 72, igika cya gatatu y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko iburanisha ry'ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga rikorwa mu ruhame ***hari uhagarariye Leta***. Mu birego bisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga, ntaho biteganijwe ko ari Leta iregwa. Ahubwo Leta iza mu rubanza kugaragaza aho ihagaze ku myumvire y'Itegeko risabirwa kuvanwaho bitewe no kuba ariyo ihagarariye inyungu za rubanda kandi inzego zayo nizo zigira uruhare mu ishyirwaho ry 'amategeko.

[16] Bitewe n'uko Leta iza mu rubanza kugaragaza aho ihagaze ku myumvire y'itegeko risabirwa kuvanwaho nkuko byasobanuwe hejuru, ifite n'uburenganzira bwo kugaragaza aho ihagaze ku iyakirwa ry'ikirego gisaba kwemeza ko itegeko rinyuranye n'Itegeko Nshinga. Urukiko rusanga rero ibyavuzwe n'Intumwa ya Leta muri uru rubanza birebana n'inyungu z'uwatanze ikirego, bigomba gusuzumwa nk'ibitekerezo aho kuba inzitizi itanzwe n'umuburanyi mu rubanza.

B. Ibirebana n'inyungu zo gutanga ikirego

[17] Ibirego bisaba gukuraho ingingo z'amategeko kuko zinyuranye n'Itegeko Nshinga ntabwo biratangwa ari byinshi muri uru Rukiko. By'umwihariko, ni ubwa mbere uhagarariye Leta avuze ko uwatanze ikirego nta nyungu afite. Niyo mpamvu, mu gusobanura icyemezo cyarwo, Urukiko rusesengura amategeko asanzwe akoreshwa mu Rwanda arebana n'iki kibazo, rukanifashisha imanza zaciwe mu bindi bihugu aho ibirego nk'ibi bimaze igihe bitangwa.

[18] Ingingo ya 3, igika cya mbere y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: "Ikirego cyakirwa mu rukiko iyo urega afite ububasha, **inyungu** n'ubushobozi byo kurega, keretse igihe itegeko ribiteganya ukundi". Itegeko ntirisobanura izo nyungu, niba ari inyungu bwite cyangwa inyungu rusange.

[19] Ubusanzwe, nk'uko abahanga mu by'amategeko babivuga, kugira ngo ikirego cy'umuburanyi cyakirwe, umuburanyi asabwa kuba afite inyungu zigaragazwa n'ibyo asaba, zemewe n'amategeko, zitaziguye kandi ze bwite[3]. Inyungu mu rubanza zigamije kwerekana ko uwatanze ikirego hari uburenganzira ashaka guheshwa n'icyemezo cy'urukiko, cyangwa akaba ashaka ko urukiko hari ibyo rwemeza bimufitiye akamaro. Urega asabwa kuba afite inyungu mu kirego yatanze kugira ngo bikumire abashobora gutanga ibirego bagamije kwimenyekanisha cyangwa kumenyekanisha ibikorwa byabo ndetse n'abashobora gushaka guheshwa uburenganzira bugenewe abandi.

[20] Ibirebana n'inyungu kandi byitabwaho kugira ngo amikoro make agenewe inkiko akoreshwe hakemurwa ibibazo bihari aho kurangarira ku bidahari. Kuri iki kibazo, Urukiko ruburanisha ibirego birebana n'Itegeko Nshinga muri Afurika y'Epfo, mu rubanza *Zantsi v Council of State, Ciskei and Other*[4], rwavuze ko bidasanzwe ko inkiko zifata imyanzuro ku bibazo bitariho n'ibitagibwaho impaka, isesengura nk'iryo rikorwa n'amashuri mu nyungu zo kwigisha. Rwabivuze muri aya magambo: "*It is not ordinarily desirable for a court to give rulings in the abstract on issues which are not the subject of controversy and are only of academic interest [...]*. Urukiko ruhereye ku bisobanuro bitanzwe mu bika bibanziriza iki, rurasanga ibyo Intumwa ya Leta ivuga bigendanye no kugira inyungu mu rubanza byumvikana cyane cyane mu manza zisanzwe.

[21] Urukiko rusanga ariko hari itandukaniro ku birego bijyanye n'Itegeko Nshinga aho inyungu igomba kumvikana mu buryo bwagutse, cyane cyane mu gihugu nk'U Rwanda kikiri mu nzira

[3] Serge Guinchard et Thierry Debard, Lexique des termes juridiques 2015-2016, 23e éd, Dalloz, 2015 p 58. Intérêt pour agir: condition de recevabilité de l'action consistant dans l'avantage que procurerait au demandeur la reconnaissance par le juge de sa prétention. L'intérêt doit être personnel, direct, né, et actuel.

[4] Zantsi v Council of State, Ciskei and Others (CCT24/94) [1995] ZACC 9; 1995 (4) SA 615 (CC); 1995 (10) BCLR 1424 (CC) (22 September 1995).

y'iterambere aho abaturage batarasobanukirwa uburenganzira bwabo bagenerwa n'Itegeko Nshinga, bakaba bakeneye gufashwa kubugeraho hifashishijwe inkiko. Ingingo ya 72 igika cya mbere y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko: "Umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga **iyo babifitemo inyungu**" Imiterere y'imanza zisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga, igaragaza ko inyungu muri bene izo manza ishingiye ku "**kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga"** kuko ribangamiye uburenganzira bw'abasaba ko rivaho, cyangwa se rituma icyari kigamijwe n'Itegeko Nshinga kitagerwaho kandi kigomba kurengerwa.

[22] Muri uru rubanza, inyungu zaba kwemeza ko ingingo ya 233 irebana n'icyaha cyo gukoza isoni abayobozi b'Igihugu n'abashinzwe umurimo rusange w'Igihugu, iya 236 irebana n'icyaha cyo gutuka cyangwa gusebya Perezida wa Repubulika, iya 136 irebana n'icyaha cy'ubusambanyi, iya 138 irebana n'icyaha cy'ubushoreke, iya 154 irebana n'icyaha cyo gusebya mu ruhame imihango y'idini n'iya 139 irebana n'icyaha cyo guta urugo, z'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda kuko hari uburenganzira zishobora kuba zibangamiye burimo ubwo kureshya imbere y'amategeko, ubwisanzure bw'Itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru, ndetse n'ubwisanzure bw'umuryango bugomba kurengerwa na Leta.

[23] Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ni itegeko rireba abashobora gukurikiranwaho ibyaha biteganywa n'iryo tegeko mu buryo ryateganyije kandi rigomba kubahirizwa na buri wese na Me Mugisha Richard arimo. Itegeko riteganya ibyaha n'ibihano, ntirireba gusa abakoze ibyaha cyangwa abashobora kubikora, rinareba buri wese uherereye aho rikoreshwa kuko rigena imwe mu myitwarire igomba kuranga abantu, kunyuranya niyo myitwarire bikaba aribyo biba icyaha. Ibyo bivuze ko mu buryo bumwe cyangwa ubundi, iri tegeko rireba Mugisha Richard watanze ikirego, Urukiko rurasanga rero afite inyungu zo gusaba kwemeza ko zimwe mu ngingo zaryo zinyuranyije n'Itegeko Nshinga nk'umwe mu bo rireba, ushobora gukurikiranwaho ibyaha byavuzwe hejuru.

[24] Niba uwareze asanga hari itegeko rinyuranyije n'Itegeko Nshinga, ntagomba gutegereza ngo abanze akurikiranweho ibyaha biteganywa n'iryo tegeko. Igihe asanze hari itegeko rinyuranyije n'Itegeko Nshinga, afite uburenganzira bwo gusaba ko rivanwaho. Kuba haba hari itegeko rinyuranyije n'Itegeko Nshinga byafatwa nk'ikibazo gikomeye kigomba gukemurwa aho gufatwa nk'ikibazo kitariho.

[25] Kuba uwatanze ikirego atarigeze ahanwa cyangwa ngo akurikiranwe hashingiwe ku ngingo avuga ko zinyuranye n'Itegeko Nshinga, Urukiko rurasanga bitafatwa nk'aho nta nyungu afite mu rubanza, kuko kuba izo ngingo z'itegeko avuga ko zinyuranyije n'Itegeko Nshinga ziriho, ubwabyo birahagije kugira ngo atange ikirego asaba ko zivanwaho bitabaye ngombwa kugaragaza ko hari aho zakoreshejwe mu kumukurikirana. Uyu murongo ninawo wafashwe na zimwe mu nkiko z'ibindi bihugu nko mu rubanza *Klass and others v. Germany*, Urukiko rw'Uburayi rushinzwe iyubahirizwa ry'uburenganzira bwa muntu (*European Court of Human Rights*) rwari rwasabwe n'abareze kuvanaho ingingo ya 10 ya *Act of 13 August 1968 on Restrictions on the Secrecy of the Mail, Post and Telecommunications (Gesetz zur Beschränkung)* rwemeje ko umuntu ashobora gusaba ko itegeko rivaho bitabaye ngombwa kugaragaza ko ryakoreshejwe kuri we. Rwabivuze muri aya magambo: "[....]*The Court therefore accepts that an individual may, under certain conditions, **claim to be the victim of a violation occasioned by the mere existence** of secret measures or **of legislation permitting** secret measures, **without having to allege** that such measures were in fact applied to him*"[5]. Ibi bihujwe n'ikirego cyatanzwe na Mugisha Richard,

[5] European Court of Human Rights, Klass and others v Federal Republic of Germany, (Series A, NO 28) (1979-80) 2 EHRR 214, 6 September 1978 available on http://hudoc.echr.coe.int

kuba atarakurikiranwa hashingiwe ku ngingo yareze asaba ko zivaho, izo ngingo ziramureba kuko mu gihe yaba akoze ibinyuranye nazo, zashingirwaho mu kumukurikirana. Inyungu zishobora kuba iziriho cyangwa izishoboka.

[26] Inyungu mu birego bisaba kwemeza ko Itegeko rinyuranye n'Itegeko Nshinga, zigomba kumvikana mu buryo bwagutse kuko zigera ku barebwa n'Itegeko bose aho kugarukira gusa ku watanze ikirego nkuko bimeze mu birego bisanzwe. Ibyo bigaragara cyane cyane iyo urukiko rwemeje ko itegeko rivaho kuko rinyuranye n'Itegeko Nshinga, icyo cyemezo kiba kireba buri wese haba uwatanze ikirego n'utaragitanze ku buryo nta n'ushobora kongera gusaba ko itegeko cyangwa ingingo yabisabiwe, ivanwaho kuko inyuranyije n'Itegeko Nshinga. Ni nayo mpamvu, ingingo ya 72, igika cya nyuma y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko iyo Urukiko rw'Ikirenga rwemeje ko itegeko rinyuranyije n'Itegeko Nshinga, icyo cyemezo gitangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda. Ibi ni kugira ngo abantu bose barebwa n'itegeko (uwatanze ikirego n'abataragitanze) bamenye ko itegeko ritagifite agaciro.

[27] Ibirebana n'imyumvire y'inyungu ku buryo bwagutse mu birego bisaba kwemeza ko Itegeko rinyuranye n'Itegeko Nshinga byagarutsweho n'Urukiko ruburanisha ibirego birebana n'Itegeko Nshinga muri Afurika y'Epfo mu rubanza *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* muri aya magambo: " *As the arm of government which is entrusted primarily with the interpretation and enforcement of constitutional rights, it carries a particular democratic responsibility to ensure that those rights are honoured in our society. This role requires that access to the courts in constitutional matters should not be precluded by rules of standing developed in a different constitutional environment in which a different model of adjudication predominated. In particular,* ***it is important that it is not only those with vested interests who should be afforded standing in constitutional challenges, where remedies may have a wide impact***[6]."

[28] Nta kibuza ko ikirego gisaba kwemeza ko itegeko cyangwa ingingo zaryo zinyuranije n'Itegeko Nshinga gitangwa mu nyungu z'uwagitanze no mu nyungu za rubanda. N'ubwo hari indi ngingo[7] y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko itanga ububasha bwo gutanga ikirego ku mpaka zishingiye ku burenganzira bw'inyungu rusange, ntibibuza ko mu manza zisaba gukuraho Itegeko rinyuranye n'Itegeko Nshinga, umuburanyi yatanga ikirego agamije kurengera inyungu rusange za rubanda. Uyu ni nawo murongo wafashwe n'Urukiko rw'Ikirenga rwa Canada nko mu rubanza *Minister of Justice (Can.) v. Borowski*[8], aho umucamanza wanditse urwo rubanza amaze gusesengura izindi manza urwo Rukiko rwaciye yavuze ati: "*I interpret these cases as deciding that to establish status as a plaintiff in a suit seeking a declaration that legislation is invalid, if there is a serious issue as to its invalidity, a person need only to show that he is affected by it directly or that he has* ***a genuine interest as a citizen in the validity of the legislation and that there is no other reasonable and effective manner in which the issue may be brought before the Court****. In my opinion, the respondent has met this test and should be permitted to proceed with his action*"

[29] Uretse ko ingingo z'itegeko zisabirwa kuvanwaho zimureba nk'umuntu ushobora kwandika inyandiko ku bayobozi zikaba zafatwa nk'izibakoza isoni agakurikiranwa, Me Mugisha Richard nk'umwenegihugu ushishikajwe n'iyubahirizwa ry'uburenganzira bwo gutanga amakuru no kuyahabwa bukubiyemo uburenganzira bw'itangazamakuru ndetse n'uburenganzira bwo gukurikira ko umuryango urengerwa nkuko bisabwa n'Itegeko Nshinga, afite inyungu zo gusaba kwemeza ko ingingo z'itegeko zibangamiye ubwo burenganzira zivanwaho.

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[6] Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others (CCT5/95) [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (6 December 1995). Paragraph 230

[7] Ingingo ya 80 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ivuga ibireba n'iItangwa ry'ikirego n'icyemezo cy'Urukiko ku mpaka zishingiye ku burenganzira bw'inyungu rusange.

[8] Minister of Justice (Can) v Borowski [1981] 2 SCR 575 at 598, per MARTLAND.J. for the majority.

[30] Inyungu z'Avoka watanze ikirego gisaba kwemeza ko itegeko rinyuranye n'Itegeko Nshinga zigomba no kureberwa ku mwuga we nk'umunyamategeko, n'uruhare afite muri sosiyete rwo kuyateza imbere bikaba byamwemerera gutanga ikirego kabone nubwo byaba bigaragara ko nta nyungu zihariye agifitemo. Urukiko ruburanisha ibirego birebana n'Itegeko Nshinga muri Afurika y'Epfo (constitutional Court of South Africa), rwaciye urubanza ***Minister of Home Affairs v Eisenberg & Associates*** rwemeza ko abavoka bafite inyungu bwite zo gusaba ivanwaho ry'itegeko rinyuranyije n'Itegeko Nshinga ry'icyo Gihugu, bakagira n'inyungu nka bamwe muri rubanda zo gutanga icyo kirego. Urwo rukiko rwabivuze mu magambo akurikira: "Respondent,[Eisenberg & Associates] ***had an interest as a member of the public in asserting the right that it claimed to have and had standing to raise that issue in its own interests***[9]". Ibi ninabyo Me Mugisha Richard yaburanishije avuga ko nk'Avoka kandi nk'umwe mu baturage afite inyungu ku giti cye zo gutanga ikirego gisaba kuvanaho ingingo zaba zimubangamiye kandi zibangamiye rubanda no guharanira ko Itegeko Nshinga ryubahirizwa. Ntagomba kugaragaza ko ahagarariye abandi bavoka cyangwa irindi tsinda rya rubanda nk'uko uhagarariye Leta abivuga.

[31] Avoka kandi nk' umunyamwuga mu mategeko ufasha ubutabera, ushinzwe guhagararira, kunganira no kuburanira abantu mu nzego z'ubutegetsi, iz'ubucamanza n'izindi zose zifata ibyemezo, ashobora gutanga ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga akabikora atari kubwe ahubwo mu nyungu z'ubutabera (*in the interest of the administration of justice*). Ubumenyi mu mategeko avoka yagombye kuba afite buruta ubw'abaturage basanzwe cyangwa abandi batize amategeko, ndetse n'inshingano ahabwa n'umwuga bimushyira mu mwanya mwiza wo gutanga ibirego bisaba kwemeza ko hari ingingo zinyuranye n'Itegeko Nshinga, kuko niwe usobanukiwe kurusha abandi ibirebana n'amategeko n'inzira zo gusaba ko akurwaho iyo anyuranyije n'Itegeko Nshinga.

[32] Uyu murongo ninawo wafashwe mu rubanza ***Kruger v President of the Republic of South Africa and Others.*** Urukiko ruburanisha ibirego birebana n'Itegeko Nshinga muri Afurika y'Epfo rwahamije ko umunyamwuga ashobora gushingira ku nyungu zitaziguye no gushingira ku byo akora agatanga ikirego mu nyungu z'ubutabera. Rwabivuze muri aya magambo: "*Where the practitioner can establish both that a proclamation is of direct and central importance to the field in which he or she operates,* ***and that it is in the interests of the administration of justice that the validity of that proclamation be determined by a court, that practitioner may approach a court to challenge the validity of such a proclamation****. Legal practitioners must not assume that they will be allowed to bring applications to this Court for a declaration of invalidity based purely on financial self- interest or in circumstances where* ***they cannot show that it will be in the interest of the administration of justice that they do so****.*[10] Me Mugisha Richard, nk'umunyamwuga w'amategeko, ufite ubumenyi mu mategeko, gutanga ikirego mu Rukiko rw'Ikirenga asaba ko ingingo yavuze zivanwaho kuko zinyuranyije n'amategeko, Urukiko rurasanga biri mu nyungu z'ubutabera kuko ashobora gutanga ibisobanuro bifasha Urukiko kandi, icyemezo gifashwe kikagira inyungu ku butabera muri rusange.

[33] Urukiko rusanga rero, hasesenguwe ibimaze kuvugwa, Me Mugisha Richard afite inyungu ku buryo butandukanye nk'uko byasobanuwe hejuru, zo gutanga ikirego gisaba kwemeza ko ingingo z'amategeko zinyuranye n'Itegeko Nshinga.

[34] Kubera uburemere bw'ibibazo bizasuzumwa muri uru rubanza ruburanishwa mu mizi, hitawe no kuba nta zindi manza zaciwe n'inkiko z'u Rwanda ku bibazo bisa n'ibiri muri uru rubanza, Urukiko ruramenyesha abantu n'ibigo cyangwa imiryango itegamiye kuri Leta bifuza gutanga ibitekerezo muri uru rubanza nk'inshuti z'urukiko (*Amicus Curiae)* kandi babifitiye ubumenyi, ko babisaba binyujijwe ku

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[9] Constitutional Court of South Africa, Minister of Home Affairs v Eisenberg & Associates, (CCT15/03) [2003] ZACC 10; 2003 (8) BCLR 838 ; 2003 (5) SA 281.

[10] Kruger v President of the Republic of South Africa and Others (CCT 57/07) [2008] ZACC 17; 2009 (1) SA 417 (CC); 2009 (3) BCLR 268 (CC) (2 October 2008).

Bwanditsi bw'Urukiko rw'Ikirenga bitarenze tariki ya 8/02/2019, bakanatanga inyandiko bifuza kugeza ku Rukiko bitarenze tariki ya 28/02/2019.

III. CYEMEZO CY'URUKIKO

[35] Rwemeje ko Me Mugisha Richard afite inyungu yo gutanga ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga;

[36] Ruvuze ko iburanishwa ry'uru rubanza rizakomeza ku wa 18/03/2019.