

MUKAGIFUNDU N’UNDI v. UWAMARIYA N’UNDI

[Rwanda URUKIKO RW’IKIRENGA –
RS/REV/INJUST/CIV0011/16/CS – Kanyange, P.J., Ngagi na
Mukandamage, J.) 21 Mata 2019]

Imiburanishirize y’imanza z’imbonezamubano – Ikirego gisaba gusubirishamo urubanza ku mpamvu z’akarengane – Ababuranyi – Ababuranyi bose barebwa n’urubanza rusabirwa gusubirishwamo ku mpamvu z’akarengane bagomba guhamagazwa kabone n’ubwo bataba baranditse babisaba urwego rubishinzwe.

Incamake y’ikibazo: Mukagifundu na Mukamutana batanze ikirego mu cyahoze ari Urukiko rwa Mbere rw’Iremezo rwa Gitarama gisaba kwemeza ko Rugarama ari we se. Ivugururwa ry’amategeko n’inzege z’ubutabera ryo mu mwaka wa 2004 ryabaye izo manza zitaraburanishwa, zoherezwa Urukiko rw’Ibanze rwa Gacurabwenge rwari rufite ububasha bwo kuziburanisha.

Urubanza rwa Mukamutana rwaje gusibwa muri urwo rukiko, ariko ruza kongera kubyutswa, Uwamariya aza kugoboka ku bushake muri izo manza avuga ko ahagarariye abazungura ba Iyamuremye wapfuye yaragobotse mu manza zombi za mbere.

Urukiko rwemeje ko Mukagifundu na Mukamutana ari abana ba Rugarama, Uwamariya, Muhawenimana na Uwizeyimana bajuririra imikirize y’urwo rubanza mu urukiko Rwisumbuye rwa Muhanga rwaburanishirije hamwe imanza zombie maze rutesha agaciro izo manza zaciwe n’Urukiko rw’Ibanze rwa

Gacurabwenge, bituma Mukagifundu wari uhagarariye na murumuna we Mukamutana ajurira mu Urukiko Rukuru, ubujurire bwabo ntibwakirwa kubwo kudashingira ku mategeko.

Mukagifungo yajuririye kandi mu Urukiko rw'Ikirenga, mu cyemezo cy'ibanzirizasuzuma Umucamanza yemeza ko ubujurire butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ikirenga, Mukagifundu Pauline ahita yandikira Urwego rw'Umuvunyi asaba ko urubanza rwaciwe n'Urukiko Rwisumbuye rwa Muhanga rusubirwamo ku mpamvu z'akarengane kuko Urukiko rwirengagije ko abajuriye muri urwo rukiko Muhawenimana na Uwizeyimana batabaye ababuranyi mu manza za mbere bikaba byari gutuma ubujurire butakirwa.

Nyuma yo gusanga ubusabe bwe bufite ishingiro, Urwego rw'Umuvunyi rwasabye ko urubanza rusubirwamo ku mpamvu z'akarengane; urubanza rusubirwamo mu Rukiko rw'Ikirenga ku mpamvu z'akarengane.

Mu iburanisha mu Rukiko rw'Ikirenga, abaregwa babyukije inzitizi yo kutakira ikirego cya Mukamutana kuko we atigeze atanga ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane ku Rwego rw'Umuvunyi.

Mukamutana yiregura avuga ko we na Mukagifundu bombi bahuriye mu manza zahujwe n'Urukiko Rwisumbuye ari nazo zisubirishwamo ku mpamvu z'akarengane kandi ko rumwe rutasubirishwamo ngo urundi rusigare. Mukagifundu we avuga ko yasabye Urwego rw'Umuvunyi ko urubanza rwe rwasubirishwamo ku mpamvu z'akarengane, ariko ko yasabiraga na murumuna we kuko ari we wanamuhagarariye mu nkiko zose.

Incamake y'icyemezo: Ababuranyi bose barebwa n'urubanza rusabirwa gusubirishwamo ku impamvu z'akarengane bagomba guhamagazwa kabone n'ubwo bataba baranditse babisaba urwego rubishinzwe kuko iyi nzira (procedure) igamije kuvanaho akarengane kagaragaye mu rubanza rwaciwe burundu, bityo Mukamutana ntagomba kuvanwa mu rubanza.

Inzitizi isaba kutakira ikirego nta shingiro zifite.

Iburanisha rirakomeza mu mizi.

Amagarama y'urubanza arasubitswe

Amategeko yashingiweho:

Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 78 n'ya 79.

Itegeko N°76, N° 76/2013 ryo ku wa 11/09/ 2013 rigena inshingano, ububasha, imiterere n'imikorere by'Urwego rw'Umuvunyi, ingingo ya 15.

Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 10.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 06/06/1996, Mukagifundu Pauline na Mukamutana Hyacinthe batanze ibirego mu Rukiko rwa Mbere

rw'Iremezo rwa gitarama, basaba ko urwo rukiko rwemeza ko Rugarama Landouard ari we se, urubanza rwa Mukagifundu ruhabwa N° RC 152/1/96, naho urwa Mukamutana ruhabwa N° RC 0148/1/96.

[2] Ivugururwa ry'amategeko ryo mu mwaka wa 2004 ryabaye izi manza zombi zitaraburanishwa. Mukagifundu Pauline yagiye gukurikirana urubanza rwe mu Rukiko Rwisumbuye rwa Muhanga, yoherezwa mu Rukiko rw'Ibanze rwa Gacurabwenge kuko ikirego cye cyari mu bubasha bwarwo, agezeyo, bamubwira ko urubanza rwe RC 152/1/96 rwasibwe hamwe n'urwa murumuna we (Mukamutana Hyacinthe).

[3] Mukagifundu Pauline yatanze ikirego RC 0175/09/TB/GBWE abyutsa urwo rubanza, hanyuma, mu iburanisha ryarwo, biza kugaragara ko urubanza N° RC 152/1/96 rutasibwe, ahubwo hasibwe urubanza N° RC 148/1/96 rwa murumuna we Mukamutana Hyacinthe, bityo, bisabwe na Mukagifundu Pauline, Urukiko rwemeza ko aretse urwo rubanza (RC 0175/09/TB/GBWE); maze akomeza urubanza rwe rwa mbere RC 152/1/96 mu Rukiko rw'Ibanze rwa Gacurabwenge, ruhabwa RC 0264/09/TB/GBWE - RC 152/1/96. Mukamutana Hyacinthe nawe yabyukije urubanza rwe N° RC 148/1/96, rwasibwe rumaze guhabwa RC 0060/05/TD/KMYI/RC167/09/TB/GBWE, ikirego cye gihabwa RC 0176/09/TB/KBWE.

[4] Uwamariya Agnès yatanze igarama agoboka mu rubanza RC 264/09/TB/GBWE - RC 152/1/96, hamwe n'urubanza N° RC 0176/09/TB/GBWE avuga ko ahagarariye abazungura ba Iyamuremye Véneranda wari waragobotse mu manza zombi za mbere (urubanza RC 152/1/96 hamwe na RC 148/1/96) akaza kwitaba Imana.

[5] Mu rubanza RC 264/09/TB/GBWE-RC152/1/96, Urukiko rwemeje ko Mukagifungo Pauline ari umwana wa Rugarama Landouard, ko ikirego cya Uwamariya Agnès nta shingiro gifite. Mu rubanza RC 0176/09/TB/KBWE, na none, urwo rukiko rwemeje ko Mukamutana Hyacinthe nawe ari umwana wa Rugarama Landouard.

[6] Uwamariya Agnès, Muhawenimana Bernadette na Uwizeyimana Marie Goretti bajuririye urubanza RC 0264/9/TB/GBWE-RC 0512/1/96 n'urubanza RC 0176/09/TB/GBWE, mu Rukiko Rwisumbuye rwa Muhanga, izo manza zihabwa RCA 0163/010/TGI/MHG na RC RCA 0164/010/TGI/MHG. Urwo rukiko rwaciye izo manza ku wa 12/11/2010, rwemeza ko urubanza RC 0264/09/TB/GBWE - RC152/1/96 n'urubanza RC 0176/09/TB/GBWE zajuririye zihindutse mu ngingo zazo zose kandi ko zikuweho, ko Mukagifundumu Pauline na Mukamutana Hyacinthe batsinzwe.

[7] Mukagifundumu Pauline ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru, Urugereko rwa Nyanza, ubujurire bwe buhabwa RCAA 0347/10/HC/NYA, ku wa 14/10/2011, urwo rukiko rwemeza kutakira ngo rusuzume ubujurire rwashyikirijwe kuko butujuje ibiteganywa n'ingingo ya 106 y'itegeko ngenga n° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko.

[8] Mukagifundumu Pauline, na none, ntiyishimiye icyemezo cy'Urukiko Rukuru, Urugereko rwa Nyanza, ajuririra Urukiko rw'Ikirenga, ubujurire bwe buhabwa RCAA 0135/11/CS. Mu cyemezo RC 0050/12/PRE-EX/CS cy'ibanzirizasuzuma ry'urubanza, umucamanza yemeje ko ubujurire bwa Mukagifundumu Pauline butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ikirenga.

[9] Nyuma y'urwo rubanza, Mukagifundu Pauline yandikiye Urwego rw'Umuvunyi asaba ko urubanza RC 0163-RCA 0164/010/TGI/MHG, rwaciwe n'Urukiko Rwisumbuye rwa Muhanga, rwasubirishwamo ku mpamvu z'akarengane zikurikira:

1° kuba urukiko rwarirengagije ko abajuriye, Muhawenimana Bernadette na Uwizeyimana Marie Goretti, batabaye abaturanyi mu manza zajuririwe arizo RC 0264/09/TB/GBWE-RC152/1/96 na RC 0176/09/TB/GBWE, kandi iyi ari inzitizi ndemyagihugu ituma ikirego kitakirwa ngo kiburanishwe mu mizi, bityo kuba cyarakiriwe kandi kitaragombaga kwakirwa bikaba byaragize ingaruka ku manza RC 0264/09/TB/GBWE/RC152/1/96 na RC0176/09/TB/GBWE, mukagifundu na Mukamutana bari batsinze;

2° kuba Uwamariya Agnès yaragobotse mu manza RC 0264/09/TB/GBWE/RC152/1/96 na RC 0176/09/TB/GBWE avuga ko ahagarariye abazungura ba Iyamuremye Vénéranda aribo Muhawenimana Bernadette na Uwizeyimana Marie Goretti, ariko kuri urwo rwego ndetse n'urw'ubujurire akaba yaratanze ikirego mu izina rye, cyane cyane ko ku rwego rw'ubujurire, Uwizeyimana Marie Goretti nawe yareze; bityo ko iyo nayo ari inzitizi ndemyagihugu ituma ikirego cyo kugoboka mu rubanza kitaragombaga kwakirwa.

[10] Urwego rw'Umuvunyi, mu ibaruwa N° OMB 03/1689/0615 /KJP yo ku wa 02/06/2015, rwandikiye Perezida w'Urukiko rw'Ikirenga, rusaba ko urwo rubanza RCA 0163-

RCA 0164/010/TGI/MHG rwasubirwamo kubera impamvu z'akarengane; nyuma yo gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yemeza ko dosiye ishyikirizwa ubwanditsi bw'Urukiko kugira ngo urubanza ruburanishwe.

[11] Iburanisha ry'uru rubanza ryabereye mu ruhame ku wa 17/01/2017 no ku wa 14/03/2017, Mukagifundu Pauline na Mukamutana Hyacinthe baburanirwa na Me Mitsindo Tom, naho Uwamariya Agnès, Muhawenimana Bernadette na Uwizeyimana Marie Goretti bahagarariwe na Me Nkubayingoga Samuel, uyu akaba yaratanze inzitizi yo kutakira ikirego cya Mukamutana Hyacinthe kubera ko atigeze asaba ko urubanza rusubirishwamo ku mpamvu z'akarengane.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

Kumenya niba ikirego cya Mukamutana Hyacinthe kitagomba kwakirwa

[12] Nkubayingoga Samuel, uburanira Uwamariya Agnès, Muhawenimana Bernadette na Uwizeyimana Marie Goretti, avuga ko ikirego cya Mukamutana Hyacinthe kitagomba kwakirwa kuko Mukagifundu Pauline ari we wenyine wasabye ko urubanza rwasubirishwamo ku mpamvu z'akarengane, ndetse ko n'ibaruwa y'Urwego rw'Umuvunyi igaragaraho Mukagifundu Pauline gusa.

[13] Mukagifundu Pauline avuga ko yasabye Urwego rw'Umuvunyi ko urubanza rwe rwasubirishwamo ku mpamvu z'akarengane, ariko ko yasabiraga na murumuna we,

Mukamutana Hyacinthe kuko ari we wanamuhagarariye mu nkiko zose, bityo Urwego rw ‘Umuvunyi narwo rusaba ko imanza zabo zari zarahujwe, zisubirishwamo ku mpamvu z’akarengane.

[14] Me Mitsindo Tom, wunganira Mukagifundu Pauline akanahagararira Mukamutana Hyacinthe, avuga ko uwatanze inzitizi nawe yemera ko ababuranyi bombi bahuriye mu manza RCA 0163-RCA 0164/010/TGI/MHG zahujwe, ari nazo zisubirishwamo ku mpamvu z’akarengane; bityo ko rumwe rutasubirishwamo ngo urundi rusigare mu gihe Mukagifundu Pauline avuga ko yari anahagarariye Mukamutana Hyacinthe. akomeza avuga ko n’icyemezo cya Perezida w’Urukiko rw’Ikirenga cyo gusubirishamo ku mpamvu z’akarengane urubanza rwaciwe ku rwego rwa nyuma, kigaragaza ko izo manza zombi zahujwe ari zo zigomba gusubirishwamo, bivuga ko na Mukamutana Hyacinthe ari umuburanyi.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 78, y’itegeko ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga, iteganya ko: “Urukiko rw’Ikirenga ni rwo ruburanisha ibirego byerekeranye no gusubirishamo ku mpamvu z’akarengane imanza zaciwe ku rwego rwa nyuma byemejwe na Perezida w’Urukiko rw’Ikirenga”. Ingingo ya 79, igika cya mbere n’icya kabiri, y’iryo tegeko ngenga, iteganya ko: “Urwego rw’Umuvunyi ni rwo rufite ububasha bwo kuregera urukiko rw’ikirenga ibirego byerekeranye no gusubirishamo ku mpamvu z’akarengane urubanza rwaciwe ku rwego rwa nyuma. iyo kuva aho urubanza ruciriwe burundu habonetse ibimenyetso bigaragaza akarengane kavugwa mu

ngingo ya 81 y'iri tegeko ngenga, abari ababuranyi muri urwo rubanza bashobora kubimenyesha Urwego rw'Umuvunyi [...]”.

[16] Ingingo ya 15 y'itegeko n° 76/2013 ryo ku wa 11/09/2013 rigena inshingano, ububasha, imiterere n'imikorere by'Urwego rw'Umuvunyi, iteganya ko: “mu nyungu z'ubutabera, urwego rufite ububasha bwo gusaba Urukiko rw'Ikirenga gusuzuma no gusubiramo urubanza rwaciwe n'inkiko zisanzwe, inkiko z'ubucuruza cyangwa iza gisirikare ku rwego rwa nyuma, mu gihe hakigaragamo akarengane. Iryo suzuma n'isubiramo bikorwa hakurikijwe ibiteganywa mu itegeko ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga”.

[17] Dosiye y'uru rubanza igaragaza ko mu rubanza RCA 0163-RCA 0164/010/TGI/MHG, ari narwo rwasubirishijwemo ku mpamvu z'akarengane, Mukagifundu Pauline ari we gusa ugaragara nk'uregwa, ariko, mu kwiregura kwe, akaba yari anahagarariye Mukamutana Hyacinthe, ndetse n'Urukiko, mu cyemezo cyarwo (dispositif), ruvanaho urubanza RC 0264/09/TB/GBWE/RC 0152/1/96 n'urubanza RC 176/09/TB/GBWE¹ zaciriwe hamwe ku wa 25/03/2010 n'Urukiko rw'Ibanze rwa Gacurabwenge. Na none, inyandiko isesengura ikibazo yakozwe n'Urwego rw'Umuvunyi ntigaragaza ko Mukagifundu Pauline yarushyikirije ikibazo afite anahagarariye Mukamutana Hyacinthe, ariko umwanzuro wafashwe n'urwo rwego werekana ko rwasanze, mu icibwa ry'urubanza RC 0163 - RCA 0164/010/TGI/MHG, Mukagifundu Pauline na Mukamutana Hyacinthe bahuriyeho nk'abaregwaga (mu bujirire), harabayemo akarengane kuko Urukiko Rwisumbuye rwa Muhanga rwirengagije inzitizi

¹ Urubanza rwa Mukamana Hyacinthe

z'indemyagihugu zari gutuma ubujurire bwa Uwamariya Agnès, Muhawenimana Bernadette na Uwizeyimana Marie Goretti butakirwa.

[18] Urukiko rurasanga, hakurikijwe ibiteganywa n'ingingo z'amategeko zavuzwe haruguru, ikirego gitangwa n'urwego rw'umuvunyi mu rukiko rw'ikirenga kiba kigamije gusaba ko akarengane rubona ko kari mu rubanza rwaciwe burundu kavanwaho, ibi bikaba byerekana ko ababuranyi bose barebwa n'urwo rubanza bagomba kuruhamagazwamo. Kuba Me Nkubayingoga Samuel avuga ko ikirego cya Mukamutana Hyacinthe kitagomba kwakirwa, ariko ntagaragaze ingingo y'itegeko iteganya ko umuntu utaragejeje ikibazo ku Rwego rw'Umuvunyi, atemererwa kuba umuburanyi mu rubanza rurebana no gusubirishamo ku mpamvu z'akarengane, byerekana ko ibyo avuga nta shingiro byahabwa.

[19] Urukiko rurasanga, by'umwihariko, Mukamutana Hyacinthe atagomba kuvanwa muri uru rubanza, kuko, hakurikijwe imiterere yarwo, ingingo zijyanye n'akarengane kagomba gusuzumwa, nk'uko kagaragajwe n'Urwego rw'Umuvunyi, nawe zimureba, ku buryo aramutse atarugaragayemo, hanyuma icyemezo gifashwe kikamugiraho ingaruka, byaba binyuranyije n'ibiteganywa n'ingingo ya 10 y'itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, iteganya ko nta muburanyi ushobora gucirwa urubanza atumviswe cyangwa atahamagawe.

[20] Urukiko rurasanga, hakurikijwe ibimaze gusobanurwa haruguru, inzitizi yo kutakira ikirego cya Mukamutana Hyacinthe yatanzwe na Me Nkubayingoga Samuel, uburanira

Uwamariya Agnès, Muhawenimana Bernadette na Uwizeyimana Marie Goretti, nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko inzitizi yatanzwe na Me Nkubayingoga Samuel, uburanira Uwamariya Agnès, Muhawenimana Bernadette na Uwizeyimana Marie Goretti, nta shingiro ifite;

[22] Rwemeje ko iburanisha ry'uru rubanza rizakomeza mu mizi ku wa 27/06/2017;

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