

Re. GLIHD

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00002/2019/SC – (Rugege, P.J., Nyirinkwaya, Cyanzayire, Rukundakuvuga na Hitiyaremye, J.) 4 Ukuboza 2019]

Itegeko Nshinga – Uburenganzira k'umutungo – Uburenganzira ku mutungo ku babana batarashyingiranywe – Ishingiro ry'ukugabana umutungo kw'abari basanzwe babana nk'umugore n'umugabo batarashyingiranywe nuko nyine uwo mutungo baba bari bawusangiye cyangwa barawushakanye – Ababana nk'umugore n'umugabo n'ubwo baba batarashyingiranywe, umutungo bungutse bakibana, waba utimukanwa cyangwa uwimukanwa, iyo batandukanye bawugabana.

Imikorere y'inkiko – Ihame ry'ukubahiriza umurongo wafashwe (stare decisis), – Urukiko rw'Ikirenga nk'Urukiko rukuriye izindi kandi rufite imiterere yihariye ituma rugira ububasha ku moko y'imanza zose inkiko zishyikirizwa kugira ngo rubashe kuzitangaho umurongo uyobora izindi nkiko mu micire y'imanza bituma ari rwo soko nkuru y'imirongo inkiko zindi zigenderaho.

Imikorere y'inkiko – Ihame ry'ukubahiriza umurongo wafashwe (stare decisis) – Mu rwego rwo kubahiriza amahame ashingiye ku kubahiriza umurongo wafashwe (stare decisis), buri Rukiko rugomba kubahiriza umurongo rwafashe ku kibazo runaka cyangwa umurongo wafashwe kuri icyo kibazo n'urukiko rurukuriye

Incamake y'ikibazo: GLIHD yareze mu Rukiko rw'Ikirenga isaba kwemeza ko igika cya 2 cy'ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina kinyuranye n'ingingo ya 15,16 na 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 nk'uko ryavugururwe muri 2015.

Mu gusobanura ikirego cyayo, GLIHD ivuga ko igika cya 2 cy'ingingo ya 39 y'itegeko ryavuzwe haruguru, aho iteganya ko igabana ku babana nk'umugabo n'umugore riba gusa iyo umwe muri bo agiye gushakana n'undi batabanaga; bityo ababana batarashyingiranywe ntibahawe amahirwe angana cyangwa ngo abarengere kimwe kuko nta yindi mpamvu itari ishyingirwa yateganyijwe. Yasobanuye kandi ko mu gihe umwe muri bo ashatse uruhare rwe ku mutungo kugira ngo abe yawikenuza, adashobora kurubona atabanje kugaragaza ko icyatumye atandukana na mugenzi we, ari ugushaka undi mugore cyangwa undi mugabo; ibi bagatuma uyu ntacyo akora ku mitungo yahahanye n'uwo batandukanye.

Leta y'u Rwanda yari yahamagajwe muri uru rubanza, uyihagarariye avuga ko ibyo urega asaba nta shingiro bifite kuko igika cya 2 cy'ingingo ya 39 y'itegeko ryavuzwe haruguru kivuyemo nta burenganzira bwo kugabana ku babanaga batarashyingiranywe ahubwo baba babwambuwe burundu, kandi ko ingingo ubwayo nta gisobanuro (sens) yaba igifite kuko ibika 4 byose biyigize byuzuzanya. Yongeyeho ko ahubwo byaba byiza igika cya 2 cy'ingingo ya 39, cyakorerwa ubugororangingo, iryo gabana rikaba ryabaho mu gihe umwe muri abo babanaga nk'umugabo n'umugore agiye gushyingirwa, cyangwa mu gihe habayeho iyindi mpamvu ituma bareka kubana.

Kaminuza y'u Rwanda, Ishami ry'amategeko yaje mu rubanza nk'Inshuti y'Urukiko ivuga ko igika cya 2 cy'ingingo yavuzwe haruguru itanyuranye n'Itegeko Nshinga kuko nta cyiciro cy'abashakanye iri tegeko ryaheje, ndetse ko umurongo watanze n'Urukiko rw'Ikirenga

urengera ku buryo bumwe abatandukanye barabanaga nk'abashakanye hatitawe ku mpamvu ituma batandukana.

Ku birebana no kumenya niba imanza zaciwe n'Urukiko rw'Ikirenga kuri icyo kibazo zakemuye impaka ku birebana n'uburenganzira urega avuga ko buvutswa abatandukanye batagamije kongera gushaka, Urega avuga ko izo imanza zaciwe zitamaze impaka, kuko nta rubanza rwagisuzumye muri ubwo buryo, kandi ko kuba mu mategeko ariho ubu nta kigitegeka inkiko zo hasi gukurikiza umurongo watanzwe n'Urukiko rw'Ikirenga bitera impungenge ko inkiko zo hasi zishobora kurenganya abatandukanye ku mpamvu zitari izo gushaka undi mugore/umugabo igihe ikirego cyayo cyaba kidahawe agaciro.

Leta y'u Rwanda kimwe na Kaminuza y'u Rwanda nk' Inshuti y'Urukiko basanga izo manza zarakemuye icyo kibazo kuko zemeje ko ababanaga nk'umugore n'umugabo, igihe batandukanye, bafite uburenganzira ku mutungo bashakanye kandi zikaba ntaho zikumira abatandukanye ku zindi mpamvu zitari ugushaka.

Incamake y'icyemezo: 1. Ikibazo kirebana n'uburenganzira ku mutungo bw'abatandukanye barabanye nk'umugabo n'umugore batarashyiranywe mu buryo bukurikije amategeko hatanitawe ku mpamvu zituma batandukana cyatanzweho umurongo n'Urukiko rw'Ikirenga mu manza zitandukanye rwaciye.

2. Ishingiro ry'ukugabana umutungo kw'abari basanzwe babana nk'umugore n'umugabo batarashyiranywe nuko nyine uwo mutungo baba bari bawusangiye cyangwa barawushakanye.

3. Ababana nk'umugore n'umugabo n'ubwo baba batarashyiranywe, umutungo bungutse bakibana, waba utimukanwa cyangwa uwimukanwa, iyo batandukanye barawugabana.

4. Urukiko rw'Ikirenga, nk'Urukiko rukuriye izindi kandi rufite imiterere yihariye ituma rugira ububasha ku moko y'imanza zose inkiko zishyikirizwa kugira ngo rubashe kuzitangaho umurongo uyobora izindi nkiko mu micire y'imanza, bituma ari rwo soko nkuru y'imirongo inkiko zindi zigenderaho.

5. Mu rwego rwo kubahiriza amahame ashingiye ku kubahiriza umurongo wafashwe (stare decisis), buri Rukiko rugomba kubahiriza umurongo rwafashe ku kibazo runaka cyangwa umurongo wafashwe kuri icyo kibazo n'urukiko rurukuriye

Ikirego nta shingiro gifite.

Igika cya kabiri cy'ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose ntaho kinyuranyije n'ibiteganywa mu ingingo ya 15, 16 n'ya 34 z'Itegeko Nshinga rya Repubulika y' U Rwanda.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 15, 16 na 34.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 65, 73.

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'imirimo n'iz'ubutegetsu, ingingo ya 9.

Itegeko N°59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39.

Imanza zifashishijwe:

Uwiragiye Charles v Uwamahoro Jeanine, RCAA 00043/2016/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 15/09/2019.

Gatera Johnson v Kabalisa Teddy, RS/INCONST/Pén.0003/10/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 07/01/2011.

Mpangare Hope, RS/INCONST/Pén.0001/11/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 29/04/2011.

Urubanza

I. IMITERERE Y’IKIREGO

[1] GLIHD ishingiyeye ku ngingo ya 72 y’Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko¹, yaregeye Urukiko rw’Ikirenga isaba ko igika cya 2 cy’ingingo ya 39 y’Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiyeye ku gitsina gikurwaho kugira ngo uburenganzira bw’ababana nk’umugabo n’umugore batarashyinjwe burengerwe kimwe hashingiye ku mahame ateganyijwe mu Itegeko Nshinga rya Repubulika y’u Rwanda ndetse n’andi mategeko mpuzamahanga y’uburenganzira bwa muntu u Rwanda rwashyizeho umukono.

[2] GLIHD ivuga ko ayo mahame ari aya akurikira:

- a. Uburenganzira bwo kureshya imbere y’amategeko (equality before the law);
- b. Uburenganzira bwo kurengerwa kimwe n’amategeko (Equal protection of the law);
- c. Uburenganzira bwo kutavangurwa mu bandi (Non-discrimination);
- d. Uburenganzira k’umutungo (Right to property).

[3] Ni muri urwo rwego yatanze ikirego mu Rukiko rw’Ikirenga isaba ko igika cya kabiri cy’ingingo ya 39² y’ Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiyeye ku gitsina, gikurwaho.

[4] Ikirego cyanditswe kuri N° RS/INCONST/SPEC 00002/2019/SC, Leta y’u Rwanda iruhamagazwamo, ndetse na Kaminuza y’u Rwanda isaba kuruzamo nk’Inshuti y’Urukiko. Iburanisha ryashyizwe ku wa 08/11/2019, uwo munsu ugeze, ababuranyi bose bitabye, GLIHD ihagarariwe na Umulisa Vestine (Umuyobozi wayo wungirije) yunganiwe na Me Sezirahiga Yves na Me Gumisiriza Hillary, Leta y’u Rwanda ihagarariwe na Gahongayire Miriam naho Kaminuza y’u Rwanda ihagarariwe n’abarimu b’amategeko, Shenge Laurent na Uwineza Odette.

¹ Iyi ngingo 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...”

² Iyo ngingo iteganya ko: “Ababanaga nk’umugore n’umugabo batashyiranywe mu buryo buteganywa n’amategeko, bashyirirwa hakurikije ihame ry’ubushyiranywe bw’umugabo umwe n’umugore umwe. Mu gihe umwe mu barebwa n’ibivugwa mu gika kibanziriza iki, yabanaga n’abagore cyangwa n’abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y’uko ashyingirwa. Igabana ry’umutungo rivugwa mu gika cya 2 cy’iyi ngingo ntirivutsa abana babyaranye uburenganzira bahabwa n’amategeko.”

[5] Mu gusobanura ingingo z'ikibazo bashyikirije Urukiko, Umuyobozi wungirije wa GLIDH ari we Umulisa Vestine, Me Sezirahiga Yves na Me Gumisiriza Hillary bavuga ko uburyo igika cya 2 cy'ingingo ya 39 y'Itegeko rya GBV cyanditse bunyuranye n'ibiteganywa n'ingingo ya 15, 16 na 34 z'Itegeko Nshinga, bakabisobanura mu buryo bukurikira:

a. Ku byerekeye kunyuranya n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[6] Iyi ngingo igira iti: “Abantu bose barashyira imbere y'amategeko. Itegeko ribarengera ku buryo bumwe”. GLIHD ivuga ko iyo uyu isomye ukayisesengurana n'ibiteganyijwe mu gika cya 2 cy'ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina yavuzwe haruguru, usanga mu guteganya ko igabana ku babana nk'umugabo n'umugore riba gusa iyo umwe muri bo afashe icyemezo cyo gushyingirwa n'undi utari uwo basanzwe babana; umushingamategeko akaba **atarahaye amahirwe angana cyangwa ngo arengere kimwe ababana batarashyingiranywe batandukanye kubera indi mpamvu** itari ishyingirwa ry'umwe muri bo, kuko kuri bo igabana ry'umutungo bari basangiye ridadeganyijwe.

b. Ku byerekeye kunyuranya n'ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[7] GLIHD ivuga ko ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda itenganya ko **abanyarwanda bose bavukana kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana**. Iyo ngingo ikomeza igira iti « ... ivangura iryo ari ryo ryose cyangwa kurikwirakwiza byaba bishingiye ku bwoko, ku muryango cyangwa ku gisekuru, ku nzu, ku ibara ry'umubiri, ku gitsina, ku karere, ku byiciro by'ubukungu, ku idini cyangwa ukwemera, ku bitekerezo, ku mutungo, ku itandukaniro ry'umuco, ku rurimi, ku bukungu, ku bumuga bw'umubiri cyangwa ubwo mu mutwe no ku rindi vangura iryo ari ryo ryose, birabujijwe kandi bihanwa n'amategeko ».

[8] GLIHD ivuga ko iyo ngingo, iyo isomewe hamwe n'ibiteganyijwe mu gika cya 2 cy'ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, usanga cyaravanguye bamwe mu babanaga nk'umugabo n'umugore kuko kibashyira mu ngeri 2 zitandukanye : bamwe bakagira uburenganzira ku kugabana umutungo bari bafitanye cyangwa bashakanye, abandi ntibagire ubwo burenganzira kandi bose bari muri « *conditions* » zimwe : kubana nk'umugabo n'umugore. Bityo rero, ikaba isanga ibyo binyuranije n'ihame riteganywa n'Itegeko Nshinga muri iyi ngingo, ry'uko abantu bose bashyira imbere y'amategeko kandi barengerwa nayo mu buryo bumwe ndetse bikananyuranya n'ihame ribuza ivangura iryo ari ryo ryose n'icyo ryaba rishingiyeho icyo ari cyo cyose mu gihe kidashyingiye ku mpamvu zemewe n'amategeko.

c. Ibyerekeye kunyuranya n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[9] Ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda igira iti “Buri muntu afite uburenganzira k'umutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko.”

[10] GLIHD ivuga ko iyo ngingo isomewe hamwe n'ibiteganyijwe mu gika cya 2 cy'ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, usanga iki gika gikumira ndetse kikambura uburenganzira ku mutungo bamwe mu bari basanzwe babana nk'umugabo n'umugore batashyiringanywe, mu gihe impamvu yo gutandukana atari ishyingirwa ry'umwe mu babanaga muri ubwo buryo kuko mu gihe umwe muri bo ashatse uruhare rwe ku mutungo kugira ngo abe yawikenuza, adashobora kurubona atabanje kugaragaza ko icyatumye atandukana na mugenzi we, ari ugushaka undi mugore cyangwa undi mugabo. Bityo, uyu akaba adafite uburenganzira bwo kugira icyo akora ku mitungo yahahanye n'uwo batandukanye.

[11] Uugarariye Leta y'u Rwanda avuga ko asanga ibyo urega ashingiraho asaba Urukiko rw'Ikirenga ko rwakuraho igika cya 2 cy'ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina kuko kinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda nta shingiro bifite, kuko icyo gika kivuyemo noneho n'abari bemerewe ubwo burenganzira bwo kugabana igihe hari ufashe umwanzuro wo gushyingirwa baba basa n'aho babwambuwe burundu, kandi ingingo ubwayo nta gisobanuro (sens) yaba igifite kuko ibika 4 byose biyigize byuzuzanya. Havuyemo igika kimwe ntacyo yaba ikimaze kuko nta n'uwo yaba ikirengera ahubwo yaba itaye agaciro.

[12] Leta y'u Rwanda ivuga kandi ko mu rubanza N° RS/INCONST/Pén 0003/10/CS³, Urukiko rw'Ikirenga rwasanze iyo ngingo ya 39 itanyuranyije n'Itegeko Nshinga ahubwo ari uburyo umushingamategeko yahisemo bwo kugira ngo hatabaho akarengane ku byerekeye umutungo ku bantu bifuzwa kureka kubana nk'umugabo n'umugore batarashyiringanywe, umwe muri bo agahitamo gushyingirwa hakurikijwe icyo amategeko ateganywa.

[13] Leta y'u Rwanda isanga ahubwo byaba byiza igika cya 2 cy'ingingo ya 39, urega asaba ko cyavaho, gikorewe ubugororangingo, iryo gabana rikaba ryabaho mu gihe umwe muri abo babanaga nk'umugabo n'umugore agiye gushyingirwa, cyangwa mu gihe habayeho iyindi mpamvu ituma bareka kubana. Isanga rero byasobanuka neza kurushaho hongewemo igika gikurikira icya 2 kigira kiti « **iryo gabana ribaho kandi iyo habayeho impamvu iyo ari yo yose ituma ababanaga nk'umugore n'umugabo bareka kubana** ».

[14] Kaminuza y'u Rwanda, Ishami ry'amategeko, nk'Inshuti y'Urukiko muri uru rubanza yavuze ko itemeranya na GLIHD mu kuvuga ko igika cya 2 cy'ingingo ya 39 yavuzwe haruguru inyuranye n'Itegeko Nshinga, kuko nk'uko byagaragaye mu manza zaciwe n'Urukiko rw'Ikirenga, nta cyiciro cy'abashakanye iri tegeko ryaheje, kuko umurongo watanze urengera ku buryo bumwe abatandukanye barabanaga nk'abashakanye hatitawe ku mpamvu ituma batandukana.

[15] Kaminuza y'u Rwanda itanga urugero ku manza zikurikira:

³ Muri uru rubanza Gatera Johnson na Kabarisa Teddy basabaga Urukiko rw'Ikirenga kvanaho ingingo ya 39 y'itegeko No 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, kuko inyuranyije n'ingingo ya 26 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganywa ko Ubushyiringanywe bw'umugabo umwe n'umugore umwe bukorewe mu butegetsi bwa Leta ari bwo bwonyine bwemewe (...). Bavuga ko ubundi bushyiringanywe cyangwa kubana nk'umugabo n'umugore bitazwi n'Itegeko Nshinga bidashobora gutanga cyangwa gukomorwaho inshingano n'uburenganzira bingana n'iby'abashyiringanywe mu buryo bukurikije amategeko.

- a. urubanza N° RCAA 00043/2016/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 15/09/2019 haburana Uwiragiye Charles na Uwamahoro Jeanine;
- b. urubanza N° RS/INCONST/Pén.0003/10/CS rwa Gatera Johnson na Kabalisa Teddy rwaciwe kuwa 07 Mutarama 2011;
- c. urubanza N° RS/INCONST/Pén.0001/11/CS rwa Mpangare Hope rwaciwe kuwa 29 Mata 2011.

[16] Kaminuza y’u Rwanda isobanura ko muri izo manza zose, abaturanyi bari barashakanye kandi batandukana batagamije kongera gushaka. Nyamara, Urukiko rw’Ikirenga, rutitaye ku mpamvu ituma batandukana, kandi rushingiye ku ngingo ya 39 y’Itegeko ryavuzwe haruguru, rwemeje kubagabanya umutungo bashakanye ku buryo bungana.

[17] Nyuma yo kumva ibisobanuro by’ Inshuti y’Urukiko, Leta y’u Rwanda nayo yunzemo ivuga ko isanga koko impungenge za GLIHD zaracyemutse naho GLIHD yo ntiyava ku izima, ahubwo ikomeza kwemeza ko iriya ngingo ya 39 y’itegeko ryavuzwe, mu gika cyayo cya kabiri inyuranye n’Itegeko Nshinga, kandi ko imanza zavuzwe zitakemuye icyo kibazo kuko zitagisuzumye ku buryo bwihariye.

[18] Urukiko rw’Ikirenga rusanga rero ibibazo bikwiye gusumwa ari ibi bikurikira:

- Kumenya niba igika cya kabiri cy’ingingo ya 39 y’Itegeko N° 59/2008 ryo ku wa 10/09/2008 kibuzwa uburenganzira ku mutungo ababanaga nk’umugore n’umugabo igihe batandukanye batagamije gushaka undi utari uwo babanaga;
- Kumenya niba imanza zaciwe n’Urukiko rw’Ikirenga ku kibazo cy’abatandukanye babanaga nk’umugore n’umugabo zitaramaze impaka ku birebana n’uburenganzira GLIHD ivuga ko buvutswa abatandukanye batagamije kongera gushaka.

II. ISESENGURA RY’ IBIBAZO ZO BIGIZE URUBANZA

a. Kumenya niba igika cya kabiri cy’ingingo ya 39 y’Itegeko N° 59/2008 ryo ku wa 10/09/2008 kibuzwa uburenganzira ku mutungo ababanaga nk’umugore n’umugabo igihe batandukanye batagamije gushaka undi utari uwo babanaga;

[19] GLIHD ivuga ko ingingo ya 39 y’Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina itarengera kimwe ababana nk’umugabo n’umugore batarashyingiwe kuko igika cya kabiri cy’iyo ngingo gisobanura uburenganzira bagira ku mutungo bari barahahanye iyo biyemeje gutandukana ngo bashyingiranywe n’uwo badasanganywe, ariko iyo ngingo ntigire icyo ivuga ku babana batagamije gushaka undi. Ibyo GLIHD, nk’uko byasobanuwe mu bika bya 6-10, isanga ari ivangura rikorerwa abari muri icyo cyiciro cya nyuma kuko ribakumira ku mutungo bari barashatse nk’umugabo n’umugore, kandi ibyo bikaba bibangamiye uburenganzira buteganyirizwa buri muntu n’Itegeko nshinga rya Repubulika y’u Rwanda ndetse n’andi mategeko mpuzamahanga y’uburenganzira bwa muntu u Rwanda rwashyizeho umukono.

[20] Mbere yo gushyigikira ibisobanuro byatanze n’ Inshuti y’Urukiko bigaragaza ko imanza zaciwe n’Urukiko rw’Ikirenga zakemuye icyo kibazo, Leta y’u Rwanda n’ubwo itemeranyaga na

GLIHD ko iyi ngingo ya 39, igika cya kabiri inyuranyije n'Itegeko Nshinga, nayo yari yasabye ko yakosorwa ikandikwa mu buryo budatera urujijo, ikongerwamo igika gikurikira icya 2 kivuga ngo « **iryo gabana ribaho kandi iyo habayeho impamvu iyo ari yo yose ituma ababanaga nk'umugore n'umugabo bareka kubana** ».

UKO URUKIKO RUBIBONA.

[21] Mu magambo yayo yose, ingingo ya 39 y'Itegeko N° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose igira iti: “Ababanaga nk'umugore n'umugabo batashyiringanywe mu buryo buteganywa n'amategeko, bashyiringirwa hakurikije ihame ry'ubushyiringanywe bw'umugabo umwe n'umugore umwe. **Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa n'abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa.** Igabana ry'umutungo rivugwa mu gika cya 2 cy'iyi ngingo ntirivutsa abana babyaranye uburenganzira bahabwa n'amategeko.”

[22] Iyo usesenguye ibyo iyo ngingo ivuga, usanga icyari kigenderewe ari ibintu bitatu:

- a. Kwereka inzira ababana batarashakanye mu buryo bwemewe n'amategeko bakurikiza igihe bifuje gushakana mu buryo bukurikije amategeko ariko ikanabibutsa ko igihe cyose babikoze bagomba kuzirikana ko ihame ry'uko “gushyiringirwa mu buryo bwemewe n'amategeko bikorwa hagati y'umugabo umwe n'umugore umwe”. Ibi nibyo biri mu gika cya mbere cy'iyi ngingo bikaba bigaragara ko umushingamategeko yashatse kwereka umuryango ubana muri ubwo buryo, ko n'ubwo umugabo/umugore yaba afite abagore/abagabo benshi kandi akaba abakunze kimwe, atemerewe gusezerana na bo bose mu buryo bukurikije amategeko.
- b. Kugaragaza uburenganzira bw'ababanaga nk'umugore n'umugabo (batagize amahirwe yo gutoranywa nk'umugore/umugabo) ku mutungo bari basangiye, igihe umwe muri bo yifuje gushakana mu buryo bukurikije amategeko. Ibi nibyo bisobanuye mu gika cya kabiri cy'iyi ngingo. Nk'uko bigaragara, mu kubahiriza ibivugwa mu gika cya mbere cyayo gusa, hashoboraga kuvuka ibibazo ku birebana n'uburenganzira (ku mutungo) bw'abagore/abagabo basigaye igihe umugabo/umugore ahisemo gusezerana n'umwe muri bo, cyangwa se uburenganzira bw'umugabo/abagabo basigaye, igihe umugabo/umugore ahisemo, nk'uko itegeko ribiteganywa, gushakana n'umwe gusa muri bo cyangwa undi utari muri abo babanaga.
- c. Kugaragaza uburenganzira bw'abana igihe hagize ushaka undi mu buryo buvugwa muri iyi ngingo (ibi biri mu gika cya gatatu).

[23] Muri rusange nk'uko bisobanuye mu gika kibanziriza iki, iyi ngingo yagiriye gukemura ikibazo kihariye kijyanye n'ababanaga nk'umugore n'umugabo bifuje gusezerana n'umwe mu bo babanaga, igihe yabanaga na benshi. Iyi ngingo ntigamije guheza ku mutungo abatandukanye ku zindi mpamvu, ntawe igamije guha uburenganzira bwihariye cyangwa kugira uwo irenganya nkana ku buryo byakwitiranywa no kubangamira ingingo z'Itegeko Nshinga zavuzwe (ingingo ya 15, 16 na 34), ahubwo ikigaragara ni uko igamije kuyobora ababanaga nk'umugore n'umugabo bifuje gushakana mu buryo bukurikije amategeko. Abo itagize icyo ivugaho, ni ukuvuga ababanaga nk'umugore n'umugabo batandukanye batagamije gushakana, ni uko batari mu murongo w'ibyo yari

igamije. Bityo aho gufatwa nk'aho yabakumiriye, bigomba kumvikana ko ahubwo bo ntacyo yabavuzeho.

[24] Urukiko rw'Ikirenga rusanga rero iyo hari ikibazo kiriho kandi itegeko ritateganyije uko gikwiye gukemuka, ibyo ubwabyo bidasobonuye ko abo kireba bavukijwe uburenganzira runaka bahabwa n'Itegeko Nshinga, cyangwa ko hari Itegeko ribubabuza, rikaba rigomba kuvaho. Ahubwo ikibazo nk'icyo gikemuka binyuze mu busesenguzi busanzwe bukorwa n'inkiko nk'uko biteganywa n'ingingo ya 9 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'imirimo n'iz'ubutegetsu. Iyo ngingo ivuga ko: "... Iyo nta tegeko rijyanye n'ikiburanwa ririho, umucamanza ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko".

[25] Urukiko rw'Ikirenga rusanga ibivugwa mu gika kibanziriza iki ari byo byakozwe mu manza zaciwe n'Urukiko rw'Ikirenga ku manza rwaciye ku bibazo bireba uburenganzira bw'ababanaga batandukanye kandi batagamije gushaka, bityo ikirego cyatanzwe na GLIHD kivuga ko bambuwe uburenganzira bemerewe n'Itegeko Nshinga bakanaheraho basaba ko igika cya kabiri cy'ingingo ya 39 y'Itegeko ryavuzwe kivanwaho, kikaba nta shingiro gifite.

b. Kumenya niba imanza zaciwe n'Urukiko rw'Ikirenga ku kibazo cy'abatandukanye babanaga nk'umugore n'umugabo zitaramaze impaka ku birebana n'uburenganzira GLIHD ivuga ko buvutswa abatandukanye batagamije kongera gushaka

[26] GLIHD ivuga ko imanza zaciwe n'Urukiko rw'Ikirenga ku kibazo cy'ababanaga nk'umugore n'umugabo batandukanye batagamije gushaka zitamaze impaka ku kibazo cyo kuba igika cya kabiri cy'ingingo ya 39 y'Itegeko ryavuzwe kibavutsa uburenganzira mu buryo bunyuranye n'Itegeko Nshinga kuko nta rubanza rwagisuzumye muri ubwo buryo. GLIHD yongeraho kandi ko kuba mu mategeko ariho ubu, nta kigitegeka inkiko zo hasi gukurikiza umurongo watanzwe n'Urukiko rw'Ikirenga, nabyo bitera impungenge ko inkiko zo hasi zishobora kurenganya abatandukanye ku mpamvu zitari izo gushaka undi mugore/umugabo igihe ikirego cyayo cyaba kidahawe agaciro.

[27] Leta y'u Rwanda kimwe na Kaminuza y'u Rwanda nk' Inshuti y'Urukiko basanga nta mpungenge GLIHD yari ikwiye kugira kuko uburenganzira bushingiye ku ngingo ya 15, iya 16 n'iya 34 z'Itegeko Nshinga iharanira ku babanaga batarashakanye bagatandukana batagamije gushaka butabangamiwe, kuko nk'uko byasobanuwe mu manza zatanzweho ingero mu gika cya 15, Urukiko rwagaragaje ko ubwo burenganzira babufite kuko izo manza zemeje ko ababanaga nk'umugore n'umugabo, igihe batandukanye, bafite uburenganzira ku mutungo bashakanye kandi zikaba ntaho zikumira abatandukanye ku zindi mpamvu zitari ugushaka.

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[28] Urukiko rurasanga nk'uko bigaragara mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga, uru Rukiko rwaratanze umurongo wagombye kuba waramaze impungenge GLIHD ku bijyanye n'abo ivuga ko bavukijwe uburenganzira ku mutungo nk'uko bigaragara mu bika bikurikira.

[29] Mu rubanza RS/INCONST/Pén 0003/10/CS rwaciwe ku wa 07/01/2011 rwa Gatera na Kabalisa, Urukiko rwasuzumye ikibazo cyo “kumenya niba ingingo ya 39 y’Itegeko rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, yerekeye igabana ry’umutungo ku babanaga nk’umugabo n’umugore batarashyingiranywe inyuranye n’Itegeko Nshinga rya Repubulika y’u Rwanda” kuko ibyo byaba ari uguha ababanaga batarashyingiranywe uburenganzira bungana n’ubw’ababanaga barashyingiranywe mu buryo bukurikije amategeko. Urukiko, rumaze kugaragaza ko ababana batarashyingiranywe bafite uburenganzira ku mutungo bashakanye no kugaragaza ko ubwo burenganzira bunyuranye n’ubw’ababana barashyingiranywe mu buryo bukurikije amategeko, rwemeje ko “... ababanaga nk’umugabo n’umugore batarashyingiranywe bahagaritse kubana, kugira ngo bagabane umutungo (ari) uko bagomba kuba bawufitanye cyangwa barawushakanye⁴.” Rwasobanuye kandi neza ko kugira uburenganzira ku mutungo bidashingiye gusa ku kuba barabanye nk’umugabo n’umugore batarashyingiranywe, ko ahubwo bigomba kuba bigaragara ko bawufitanye cyangwa ko bawushakanye⁵.

[30] Nk’uko bigaragara muri uru rubanza, n’ubwo koko Urukiko rutasubije ku buryo bw’umwihariko ku kibazo cy’uburenganzira bw’abatandukanye batagamije gushaka kuko atari nacyo kibazo rwari rwaregewe, ariko rwasobanuye ko **ishingiro ry’ukugabana umutungo kw’abari basanzwe babana ari uko nyine bafite umutungo bari basangiye cyangwa bashakanye**. Ibyo bikaba byari bikwiye kwereka GLIHD ko n’ababanaga batandukanye batagamije gushaka, bashobora guhera kuri iki gisobanuro bakumva ko nabo uru rubanza rwabahaye uburenganzira; bapfa gusa kuba bagaragara ko hari umutungo basangiye cyangwa bashakanye.

[31] Byongeye kandi ubu burenganzira ku mutungo bw’abatandukanye batarashyingiranywe mu buryo bukurikije amategeko hatanitawe ku mpamvu zituma batandukana, bwaje gushimangirwa mu buryo bweruye mu rubanza RCAA 00043/2016/SC rwa Uwiragiye Charles na Uwamahoro Jeanine. Muri uru rubanza, abaturanyi baburanaga “Kugabana umutungo bashakanye babana nk’umugore n’umugabo ugizwe n’inzu ifite 367 n’ikibanza gifite 0139, hamwe n’imodoka ebyiri”, Urukiko rw’ikirenga rwemeje ko “... **ababana nk’umugore n’umugabo n’ubwo baba batarashyirangiranywe, umutungo bungutse bakibana, waba utimukanwa cyangwa uwimukanwa, iyo batandukanye bawugabana**⁶”. Aha hakwibutswa ko muri uru rubanza impamvu yari yaratumye Uwiragiye na Uwamahoro batandukana itari ugushaka nk’uko bigaragara mu manza RCA 00239/2016/HC/KIG na RC 0281/15/TGI/GSBO, nyamara ntibyabujije Urukiko rw’Ikirenga kubagabanya umutungo bari basangiye mbere yo gutandukana.

[32] Naho ibyo GLIHD ivuga ko nta kigitegeka izindi nkiko gukurikiza umurongo watanzwe n’Urukiko rw’Ikirenga kuva aho ingingo ya 47 y’Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 ryagenaga imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga⁷ riviriyeho, nabyo nta shingiro bifite, kuko ahubwo ihame ryo kubahiriza umurongo wafashwe ku bibazo bisa (use of precedents) mu micire y’imanza ryongerewe ingufu mu itegeko rishya rigenga ububasha bw’inkiko⁸. Nk’uko bigaragara, iryo Tegeko ryahaye Urukiko rw’Ikirenga ububasha bwihariye,

⁴ Reba igika cya 14 cy’urwo rubanza

⁵ idem

⁶ Reba igika cya 16 cy’urwo rubanza.

⁷ Igika cya 6 cy’iyo ngingo giteganyako:” Imanza n’ibyemezo by’Urukiko rw’Ikirenga bigomba kubahirizwa n’izindi nkiko zose zo mu gihugu.”

⁸ Itegeko n°30/2018 ryo ku wa 02/06/2018 rigenga ububasha bw’inkiko.

bushingiye cyane cyane ku guca imanza zitanga icyerekezo n'umurongo ngenderwaho ku zindi nkiko. Ibyo bigaragarira cyane cyane mu isobanurampamvu y'Itegeko Ngenga rishyiraho Urukiko rw'Ubujurire mu gika cya kabiri, aho risobanura ko imiterere yihariye y'Urukiko rw'Ikirenga ari ukugira ngo rube Urukiko rwitaruye, rureberera izindi, rukazikosora aho zateshutse, rugahuzza imicire y'imanza ku bibazo runaka, rukanatanga umurongo ngenderwaho izindi nkiko zo hasi zikwiye gukurikiza⁹. Iki gitekerezo cyaje gushimangirwa mu ngingo ya 65 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko aho bigaragara ko kubahiriza umurongo usanzweho mu gukemura ikibazo runaka ari ihame ndakuka kuko, kugira ngo uwo murongo uhinduke bisaba kuwuregera Urukiko rw'Ikirenga mu kirego kihariye; narwo kandi, nk'uko bigaragara mu ngingo ya 73 y'iryo Tegeko mu gika cyaryo cya nyuma, rukawuhindura rubanje kugaragaza ikibazo kigaragara mu murongo wari usanzweho, mbere yo gutanga umurongo mushya ngenderwaho.

[33] Mu mikorere y'inkiko zubahiriza amahame ashingiyeye ku kubahiriza umurongo wafashwe (stare decisis), buri Rukiko rugomba kubahiriza umurongo rwafashe ku kibazo runaka cyangwa umurongo wafashwe n'urukiko rurukuriye kuri icyo kibazo (**The basis of the system of precedent is the principle of stare decisis and this requires a later court to use the same reasoning as an earlier court where the two cases raise the same legal issues**)¹⁰, bityo uko inkiko zisumbana (**the higher up a court is in the hierarchy, the more authoritative its decisions: decisions of the higher courts will bind lower courts to apply the same decided principle**)¹¹. By'umwihariko rero, Urukiko rw'Ikirenga nk'Urukiko rukuriye izindi, birumvikana ko ari narwo soko nkuru y'imurongo inkiko zindi zigenderaho, akaba ari nayo mpamvu y'imiterere yarwo yihariye nk'uko byasobanuwe mu gika kibanziriza iki, imiterere ituma rugira ububasha ku moko y'imanza zose inkiko zishyikirizwa kugira ngo rubashe kuzitangaho umurongo uyobora izindi nkiko mu micire y'imanza.

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ikirego cyatanzwe na GLIHD cyakiriwe rugisuzumye rusanga nta shingiro gifite;

[35] Rwemeje ko igika cya kabiri cy'ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose ntaho kinyuranyije n'ibiteganywa mu ngingo ya 15, 16 n'iya 34 z'Itegeko Nshinga rya Repubulika y' U Rwanda.

⁹ Reba raporo ya Sena (Komisiyo ya Politiki n'Imiyoborere Myiza) yo kuwa 21 Werurwe 2017.

¹⁰ The open University, OpenLearn, Judges and the law, available at <https://www.open.edu/openlearn/society-politics-law/judges-and-the-law/content-section-3.4>

¹¹ Idem. *There are two exceptions to this principle: Overruling (the procedure whereby a court higher up in the hierarchy sets aside a legal ruling established in a previous case) and distinguishing (the possibility that a court may regard the facts of the case before it as significantly different from the facts of a cited precedent, so it will not find itself bound to follow that precedent).*