NDAYISENGA v UMUHOZA

[Rwanda URUKIKO RW'IKIRENGA – RC 0008/2017/SC (Mugenzi, P.J, Kayitesi na Cyanzayire J.) 28 Nzeri 2018]

Amategeko agenga bubasha bw'Inkiko – Ububasha bw'Urukiko rw'Ubujurire – Imanza zivuruzanya – Ibibazo birebana no kuvuguruzanya kw'imanza zaciwe ku rwego rwa nyuma, bikemurwa n'Urukiko rw'Ubujurire

Incamake y'ikibazo: Ikibazo cyahere muri Komite y'Abunzi aho Umuhoza yareze Mukandekezi ko yibaruje ku mutungo wasizwe na Ndayambaje kandi atari uwe, abunzi bafashe icyemezo bemeza ko ishyamba ari irya Ndayambaje. Uwo mwanzuro wabaye itegeko kuko ntawigize awujuririra.

Umuhoza yanareze nyirabukwe Mukandekezi mu Rukiko rw'Ibanze rwa Kacyiru, amukurikiranyeho umutungo yibarujeho wa nyakwigendera Ndayambaje, akawugira uw'umuryango we kandi yarawusigiwe n'umugabo. Urukiko rwaciye urubanza rusanga ikirego nta shingiro gifite.

Umuhoza yajuririye Urukiko rw'Isumbuye rwa Gasabo ariko ruza gusibwa kuko atitabye. Yaje kubyutsa urwo rubanza, maze urwo rukiko rwemeza ko Umuhoza atsinze.

Mukandekezi yaje gusubirishamo urubanza ingingo nshya mu Rukiko rw'Isumbuye rwa Gasabo. Mu gihe urwo rubanza rusabirwa gusubirishwamo ingingo nshya rutaracibwa, uwitwa Ndayisenga Protais yatanze ikirego mu Rukiko rw'Ikirenga, arega Umuhoza, asaba Urukiko gukemura ukuvuguruzanya kuri hagati y'Umwanzuro wa Komite y`Abunzi b'Umurenge wa Kimironko n'urubanza rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru ku wa 23/07/2007 rujuririrwa mu Rukiko Rwisumbuye rwa Gasabo, avuga ko izo manza zombi zaciwe ku rwego rwa nyuma.

Umuhoza avuga ko ikirego cyatanzwe na Ndayisenga Protais asaba ko uru Rukiko rwakemura ivuguruzanya ry'imanza zavuzwe haruguru kitakwakirwa, kuko cyatanzwe nta tegeko ririho riteganya ko iryo vuguruzanya rikemurwa n'Urukiko rw'Ikirenga. Avuga kandi ko no mu Itegeko rishya rigena ububasha bw`Inkiko, nta rukiko rwahawe ububasha ku birego birebana n`ivuguruzanya.

Ndayisenga avuga ko iyi nzitizi nta shingiro ifite, ko Urukiko rw'Ikirenga rufite ububasha kuri iki kirego, kuko n'ubwo izo manza zivuguruzanya zabaye itegeko, hari izindi manza zizikomokaho, zaburanishijwe Itegeko Ngenga riha ububasha Urukiko rw`Ikirenga ku ivuguruzanya ryaratangajwe, kandi Itegeko rishya ryo muri2018 rigena ububasha bw`Inkiko, ntaho ribuza URukiko rw'Ikirenga gusuzuma ibirego birebana n'ivuguruzanya ry'imanza.

Incamake y'icyemezo: 1. Ibibazo birebana no kuvuguruzanya kw'imanza zaciwe ku rwego rwa nyuma, bikemurwa n'Urukiko rw'Ubujurire, kubera ko ukuvuguruzanya kw'imanza ari ibibazo bisanzwe ugereranije n'ububasha bwihariye bwahawe Urukiko rw'Ikirenga, bityo ikirego cyatanzwe na Ndayisenga kikaba cyoherejwe mu Rukiko rw'Ubujurire.

Inzitizi y'iburabubasha ifite ishingiro;
Urubanza rwimuriwe mu Rukiko rw'Ubujurire ;
Amagarama y'urubanza ahwanye n'ibyakozwe.

Amategeko yashingiweho :

Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw`Inkiko, ingingo ya 52
Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 29 agace ka 12

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uwitwa Umuhoza Annonciata yareze muri Komite y`Abunzi b'Umurenge wa Kimironko nyirabukwe Mukandekezi Euphrasie, avuga ko igihe Goboka yakoreye *expropriation* y'umutungo yasigiwe n'umugabo we Ndayambaje Pierre, yawibarujeho kandi ariwe ugomba kuwucungira abana bane (4) yamusigiye.

[2] Komite y'Abunzi b'Umurenge wa Kimironko yakemuye icyo kibazo ku wa 15/07/2005, yemeza ko ishyamba rya kijyambere ryagurishijwe atari irya Ndayambaje Pierre, itegeka ko rigomba kuguranwa rigahabwa Gapfizi umugabo wa Mukandekezi Euphrasie kuko iryagurishijwe ryari irye (Gapfizi). Uwo mwanzuro wabaye ndakuka kuko utajuririwe.

[3] Umuhoza Annonciata yanareze nyirabukwe Mukandekezi Euphrasie mu Rukiko rw'Ibanze rwa Kacyiru, amukurikiranyeho umutungo yibarujeho wa nyakwigendera Ndayambaje Pierre, akawugira uw'umuryango we kandi yarawusigiwe n'umugabo, akaba agomba kuwukoresha mu gutunga abana.

[4] Urukiko rwaciye urubanza RC 0770/05/TD/KCY ku wa 23/03/2007, rukiza ko Umuhoza Annonciata atsinzwe, rutegeka ko amafaranga y'ishyamba ryishyuwe Goboka yafashwe na Mukandekezi Euphrasie angana na 423.570 agomba kugabanywa abana bane (4) ba nyakwigendera Ndayambaje Pierre, ariko kubera ko Umuhoza Annoncita yafashe ay'abana be akarenzaho, ntayo bahabwa; rutegeka ko amafaranga yishyuwe amazu ya nyakwigendera Ndayambaje Pierre nayo agabanywa abana be bane ni ukuvuga 893.810 Frw kuri buri mwana; abo Umuhoza Annonciata arera bagatwara 1.899.404 Frw; rutegeka Umuhoza Annonciata gusubiza abana ba Ndayambaje Pierre, barerwa na Mukandekezi Euphrasie 159.709 Frw kuko yayafashe atagomba kuyafata, runamutegeka gutanga amafaranga y'urubanza agahera kuyo yatanzeho ingwate arega.

[5] Umuhoza Annoncita yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Gasabo, ikirego cye cyandikwa kuri numero RCA 0064/07/TGI/GSBO, muri urwo rubanza hanagobokeshwa Goboka, ariko ruza gusibwa ku wa 21/11/2008, ku mpamvu y'uko Umuhoza Annonciata wajuriye, atitabye.

[6] Umuhoza Annoncita yabyukije urubanza ku wa 16/06/2009, asobanura impamvu zatumye atitaba ngo aburane urubanza rwe, Urukiko rurazemera ruburanisha urwo rubanza mu mizi.

[7] Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza RCA 0138/09/TGI/GSBO ku wa 25/02/2010, rwemeza ko ubujurire bwa Umuhoza Annonciata bufite ishingiro, rutegeka Mukandekezi Euphrasie gusubiza umutungo yahawe witwa ko ari igice cy'abana Uwambaje Liliane na Uwitonze Diane, ukagaruka mu mutungo wa nyakwigendera Ndayambaje Pierre, Umuhoza Annonciata akawucungira abana nk'uko yabiherewe uburenganzira n`Urukiko,

runategeka Mukandekezi Euphrasie kwishyura Umuhoza Annonciata indishyi zihwanye na 1.500.000 Frw akanishyura amagarama angana na 13.900 Frw. Uru rubanza RCA 0138/09/TGI/GSBO rwaciwe ku wa 25/02/2010 rwuzuzwa n’urubanza rusobanura RCA 0499/10/TGI/GSBO rwaciwe ku wa 21/01/2011.

[8] Mukandekezi Euphrasie yahise atanga ikindi kirego mu Rukiko Rwisumbuye rwa Gasabo asaba gusubirishamo ingingo nshya urubanza RCA 0138/09/TGI/GSBO, ikirego cye gihabwa numero RC 00249/2017/TGI/GSBO, ndetse inama ntegura rubanza yarwo ikaba yari iteganyijwe ku wa 02/03/2018 ariko kugeza ubu, rukaba rutaracibwa.

[9] Mu gihe uru rubanza RCA 0138/09/TGI/GSBO rusabirwa gusubirishwamo ingingo nshya rutaracibwa n’Urukiko Rwisumbuye rwa Gasabo, uwitwa Ndayisenga Protais yatanze ikirego mu Rukiko rw’Ikirenga, arega Umuhoza Annonciata, asaba Urukiko gukemura ukuvuguruzanya kuri hagati y’Umwanzuro wa Komite y`Abunzi b’Umurenge wa Kimironko wo ku wa 09/07/2005 n‘urubanza RC 0770/05/TD/KCY rwaciwe n’Urukiko rw’Ibanze rwa Kacyiru ku wa 23/07/2007 rurjuririrwa mu Rukiko Rwisumbuye rwa Gasabo, hacibwa urubanza RCA 0138/09/TGI/GSBO, avuga ko izo manza zombi zaciwe ku rwego rwa nyuma, ikirego cyahawe numero RC 00008/2017/CS.

[10] Me Nsengimana Emmanuel wunganira Umuhoza Annonciata avuga ko mu gihe ikirego cya Ndayisenga Protais kitakwakirwa, uwo yunganira yahabwa indishyi zose hamwe zingana na 1.000.000 Frw.

[11] Me Twizeyimana Innocent uhagarariye Ndayisenga Protais avuga ko indishyi zasabwe uwo yunganira atazicibwa, kuko imanza nyinshi zagiye ziba ari Umuhoza Annonciata wazishoyemo umuryango we, anasaba ko atahabwa igihembo cya avoka.

[12] Iburanisha ry`uru rubanza ryabaye ku wa 04/09/2018, Ndayisenga Protais ahagarariwe na Me Twizeyimana Innocent, Umuhoza Annonciata yunganiwe na Me Nsengimana Emmanuel. Iburanisha ritangiye, Nsengimana Emmanuel yatanze inzitizi, asaba ko ikirego cyatanzwe na Ndayisenga Protais kitakwakirwa kubera iburabubasha bw`Urukiko rw`Ikirenga ku kirego gisaba gukemura ivuguruzanya ry`imanza ryavuzwe haruguru, inzitizi y’uko rumwe muri izo manza zivugwa ko zivuguruzanya, rwasabiwe gusubirishwamo ingingo nshya mu Rukiko Rwisumbuye rwa Gasabo rutaraburanishwa, n`indi ijyanye n‘uko urega nta nyungu afite mu rubanza, ariko iyi yaje kuyivanaho igihe cy`iburanisha. Mu gusuzuma inzitizi zatanzwe, harasuzumwa ikibazo kirebana n`ububasha bw`uru Rukiko.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURA RYABYO.

Kumenya niba ikirego cy`ivuguruzanya ry’imanza kiri mu bubasha bw’Urukiko rw’Ikirenga

[13] Me Nsengimana Emmanuel wunganira Umuhoza Annonciata, avuga ko ikirego cyatanzwe na Ndayisenga Protais asaba ko uru Rukiko rwakemura ivuguruzanya ry`imanza zavuzwe haruguru kitakwakirwa, kuko cyatanzwe nta tegeko ririho riteganyamko iryo vuguruzanya rikemurwa n’Urukiko rw’Ikirenga. Asobanura ko imanza zivuguruzanya zavuzwe haruguru, zaciwe mbere y’uko hashyirwaho Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga, ryatangiye kubahirizwa ku wa 13/06/2012. Asobanura ko Umwanzuro wa Komite y’Abunzi wafashwe ku wa 15/07/2005, urubanza RC 0770/05/TD/KCY rucibwa ku wa 23/03/2007, n‘urubanza RCA

0138/09/TGI/GSBO rwaciwe ku wa 25/02/2010, ko rero kuba izo manza zaraciwe mbere y'uko itegeko urega ashingiraho ububasha bw`uru Rukiko rijyaho, nta bubasha rufite bwo kuburanisha iki kirego hashingiwe ku biteganywa n`ingingo za 87, 91 na 92 z'Itegeko Ngenga N° 03/2012/OL ryavuzwe haruguru. Avuga kandi ko no mu Itegeko rishya rigena ububasha bw`Inkiko, nta rukiko rwahawe ububasha ku birego birebana n`ivuguruzanya.

[14] Me Twizeyimana Innocent uhagarariye Ndayisenga Protais avuga ko iyi nzitizi nta shingiro ifite, ko Urukiko rw'Ikirenga rufite ububasha kuri iki kirego, kuko n`ubwo izo manza zivuguruzanya zabaye itegeko, hari izindi manza zizikomokaho, zaburanishijwe Itegeko Ngenga riha ububasha Urukiko rw`Ikirenga ku ivuguruzanya ryaratangajwe, zirimo urubanza rwa Mukandekezi Euphrasie akosoza urubanza, n'urwo gusobanuza, ko zose zaburanishijwe nyuma y'uko Itegeko Ngenga N° 03/2012/OL rivugwa rigiyeho, akaba rero asanga iryo tegeko ryarakomeje gukoreshwa kuri izo manza zivuguruzanya kugeza mu mwaka wa 2017, ko kandi Itegeko rishya N°30/2018 du 02/06/2018 rigena ububasha bw`Inkiko, ntaho ribuza uru Rukiko rw`Ikirenga gusuzuma ibirego birebana n'ivuguruzanya ry`imanza.

UKO URUKIKO RUBIBONA.

a. Ku byerekeye ububasha bw'Urukiko rw'Ikirenga ku birego by`ivuguruzanya ry'imanza igihe hakurikizwaga Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

[15] Urukiko rusanga ububasha bw'Urukiko, budakwiye kureberwa igihe imanza zaciriwe, ahubwo bugomba kureberwa igihe Urukiko rwaregewe. Ku birebana n`ikirego cya Ndayisenga Protais ku ivuguruzanya ry`imanza zavuzwe haruguru, bigaragara ko cyashyikirijwe uru Rukiko ku wa 13/07/2017, Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ryahaga ububasha Urukiko ry`Ikirenga ku ivuguruzanya ry`imanza mu ngingo yaryo ya 29, agace ka 12 rikiriho, kuko ryavanyweho ku itariki ya 02/06/2018, bityo Urukiko rukaba rusanga rwari rufite ububasha bwo kwakira no gusuzuma icyo kirego.

b. Kumenya niba Urukiko rw`Ikirenga rugifite ububasha bwo kuburanisha ibirego by`ivuguruzanya ry`imanza hakurikizwa Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko.

[16] Urukiko rusanga Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw`Inkiko ntaho ryateganyirije uru Rukiko, ububasha bwo gukemura ukuvuguruzanya hagati y`imanza, ndetse nta n`urundi rukiko rwahawe ubwo bubasha.

[17] Urukiko rusanga ariko kuba ubwo bubasha butarateganyijwe, atari ku mpamvu z`uko Umushingamategeko yashatse ko ibirego birebana n`ivuguruzanya ry`imanza bitazajya bikemurwa, ahubwo byumvikana ko byibagiranye, hakaba rero hagomba kugenwa urukiko rukwiye kuburanisha bene ibyo birego.

[18] Uru Rukiko rusanga icyerekezo cyafashwe n`Umushingamategeko mu Itegeko rishya Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw`Inkiko, ari uko imanza hafi ya zose zaburanishwaga n`Urukiko rw'Ikirenga, zashyizwe mu bubasha bw'Urukiko rw'Ubujurire, nkuko biteganyijwe mu ngingo ya 52 y`iri tegeko.

[19] Urukiko rusanga rero ubwo ukuvuguruzanya hagati y`imanza zaciwe mu rwego rwa nyuma kwari mu bubasha bw`Urukiko rw'Ikirenga nkuko bigaragara mu ngingo ya 29 agace ka 12° y'Itegeko Nº 03/2012/OL ryo ku wa 13/06/2012, ubwo bubasha ku ivuguruzanya ry`imanza nabwo bugomba guhabwa Urukiko rw'Ubujurire, bityo, akaba ari naho uru rubanza rugomba kwimurirwa, cyane ko rutari mu manza zari zatangiye kuburanishwa, zo zigomba gukomereza muri uru Rukiko, hashingiwe ku biteganywa n`ingingo ya 105 y`Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw`Inkiko iteganya ko ``Guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'urukiko zaregewe, zohererezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywa n`iri tegeko. Ibyakozwe mu rubanza n`ibyemezo byafashwe bigumana agaciro kabyo.

[20] Naho ku bijyanye n`ikibazo cya rumwe mu manza[1] zivugwaho kuba zivuguruzanya, rutaracibwa kimwe n'icy'indishyi zisabwa muri uru rubanza, Urukiko rurasanga ari ibigomba gusuzumwa n`Urukiko rw`Ubujurire, kuko arirwo rufite ububasha bwo gusuzuma urubanza.

ICYEMEZO CY'URUKIKO.

[21] Rwemeje ko inzitizi y'iburabubasha ry`Urukiko rw`Ikirenga yatanzwe na Umuhoza Annonciata ifite ishingiro;

[22] Rwemeje ko Urukiko rw`Ikirenga rudafite ububasha bwo kuburanisha ikirego kirebana n`ivuguruzanya ry`imanza rwashyikirijwe na Ndayisenga Protais;

[23] Rutegetse ko urubanza rwimuriwa mu Rukiko rw`Ubujurire;

[24] Rutegetse ko amagarama y`urubanza yatanzwe ahwanye n`ibyakozwe mu rubanza.

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[1] Umwanzuro w`Abunzi b`Umurenge wa Kimironko wafashwe ku wa 09/07/2005.
-Urubanza N°RCA 0138/09/TGI/GSBO (rukomoka ku rubanza RC 0770/05/TD/KCY) rwaciwe ku wa 25/02/2010 Mukandekezi EUphrasie yasabiye gusubirishwamo ingingo nshya, rugitegereje kuburanishwa