Re EX PARTE COMMUNAUTE DES EGLISES CHRETIENNES EN AFRIQUE (CECR)

[Rwanda URUKIKO RW'IKIRENGA – RS/RECT/RC 00001/2022/SC – (Mukamulisa, P.J., Muhumuza na Karimunda, J.) 14 Mata 2022]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Gukosoza amakosa y'imyandikire – Gukosora amakosa y'imyandikire ntibigomba kugira icyo bihindura ku cyemezo cyafashwe – Amakosa akosorwa ni ayakozwe n'umucamanza si ayakozwe n'umuburanyi uretse igihe bigaragarira Urukiko ko iyo rugenzura neza rwashoboraga kubona ayo makosa.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano –Kurega urubanza – Kureka ikirego – Itandukaniro–Kureka urubanza n'uguhara uburenganzira ku rubanza uwareze yari yatangije, akabyemererwa n'uregwa naho kureka ikirego bikorwa n'uwari wareze bitagombeye ko uregwa abyemera (acte unilatéral) – Kureka ikirego bituma urega ahara uburenganzira bwe bwo kuzongera kurega.

Incamake y'ikibazo: Uru rubanza rwatangijwe na Nyirabukobwa arega Communauté des Eglises Chrétiennes au Rwanda (CECR) mu Rukiko Rwisumbuye rwa Rubavu asaba gusesa amasezerano bagiranye yo kubaka mu isambu ye ikigo cy'ishuri maze agasubizwa uburenganzira ku migabane igizwe n'umutungo utimukanwa, agahabwa amafaranga y'umusaruro yavukijwe mu gihe cy'imyaka 10 hamwe n'amafaranga y'ibyagiye ku rubanza.

Urukiko Rwisumbuye rwaciye urubanza ku rwego rwa mbere rwasanze ikirego gifite ishingiro kuri bimwe, rutegeka Uregwa guha Urega amafaranga y'umusaruro yavukijwe mu gihe cy'imyaka icumi (10), ay'ikurikiranarubanza n'ay'igihembo cya Avoka.

Uregwa yajuririye Urukiko Rukuru, Urugereko rwa Musanze. Urwo rukiko rwasanze ubujurire nta shingiro bufite, bituma ajuririra mu Rukiko rw'Ikirenga. Ubwo urubanza rwari rutaraburanishwa, Uregwa yandikiye inteko ayimenyesha ko ihagaritse urubanza kuko yikiranuye n'uwo baburana. Mu iburanisha ku busabe bwo guhagarika urubanza, yavuze ko icyo yifuza ari ukureka ikirego maze arabyemererwa. Uregwa yaje gutanga ikindi kirego avuga ko yari yasabye kureka ubujurire, mu gufata icyemezo, Urukiko ruvuga ko yaretse ikirego nyamara icyasabwe ari ukureka urubanza, ariyo mpamvu asaba ko iryo kosa ryakosorwa, ahanditse kureka ikirego hakandikwa kureka urubanza.

Incamake y'icyemezo: 1. Gukosora amakosa y'imyandikire ntibigomba kugira icyo bihindura ku cyemezo cyafashwe. Amakosa akosorwa ni ayakozwe n'umucamanza si ayakozwe n'umuburanyi uretse igihe bigaragarira Urukiko ko iyo rugenzura neza rwashoboraga kubona ayo makosa.

2. Kureka ikirego ni igikorwa gikomeye ahanini kiri mu nyungu z'uregwa kuko kimuhesha uburenganzira bwo kutazongera gukurikiranwa na rimwe kucyo yaregwaga. Ntibyakwitiranywa no kureka ubujurire kuko uwaretse urubanza cyangwa ubujurire bimuhesha uburenganzira bwo kuzongera kurega mu gihe yaba abyifuje kandi akibyemerewe n'amategeko.

3.Gusimburanya amagambo ikirego n'urubanza bivuze guhindura icyemezo cy'Urukiko bitewe n'uko gukora kuri rimwe muri ayo magambo bihindura mu buryo bugabanya cyangwa bwongera uburenganzira n'inshingano ababuranyi bari bafite hashingiwe ku cyemezo cyafashwe mu rubanza.

Ikirego gisaba gukosora ikosa ry'imyandikire, nta shingiro gifite.

Amategeko yashingiweho:

Itegeko N° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 21, 140 n'iya 190.

Imanza zifashishijwe:

Re Musefano, RS/RECT/RC 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/02/2022, igika cya 10.

Uwimana Auréa na Succession Kanyandekwe Saidi, RCAA 0078/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/03/2010, ibika bya 19 na 20.

Inyandiko z'Abahanga zifashishijwe:

Serge Guichard (eds), Droit et pratique de la procédure civile, Paris, Dalloz, 2014, p. 113, 1123.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku masezerano atandukanye Nyirabukobwa Rhéna yakoranye na Communauté des Eglises Chrétiennes au Rwanda (CECR). Ayo masezerano yari agamije kubaka ikigo cy'amashuri cyitwa CO.C.BI mu isambu ye. Nyirabukobwa Rhéna yaje kuregera Urukiko Rwisumbuye rwa Rubavu asaba ko amasezerano yo ku wa 11/06/1999 n'ayo ku wa 09/05/2001 aseswa, agasubizwa uburenganzira ku migabane igizwe n'umutungo utimukanwa ifite agaciro ka 71.229.999 Frw, agahabwa 36.000.000 Frw ahwanye n'umusaruro yavukijwe mu gihe cy'imyaka 10 hamwe na 7.000.000 Frw y'ibyagiye ku rubanza.

[2] Mu rubanza RC 0412/06/TGI/RBV rwaciwe ku wa 21/06/2007, Urukiko Rwisumbuye rwa Rubavu rwasanze amasezerano atarubahirijwe ari ayo ku wa 11/06/1999, rwemeza ko asheshwe. CECR yategetswe kwishyura umuryango wa Nyirabukobwa Rhéna 36.000.000 Frw y'umusaruro yavukijwe mu gihe cy'imyaka icumi (10), 3.000.000 Frw y'ikurikiranarubanza na 300.000 Frw y'igihembo cya Avoka.

[3] CECR yajuririye Urukiko Rukuru, Urugereko rwa Musanze ivuga ko Urukiko rubanza rutagaragaje icyo rwahereyeho rugenera Nyirabukobwa Rhéna 36.000.000 Frw kuko igenagaciro rwifashishije ryari ryakozwe mu buryo bunyuranije n'amategeko. Yavuze kandi ko Urukiko rutahaye agaciro amasezerano ya nyuma yakoranye na Nyirabukobwa Rhéna, bituma rumugenera imigabane myinshi, bityo ko rutubahirije ibiteganywa n'ingingo ya 33 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano.

[4] Mu rubanza RCA 0445/09/HC/MUS rwaciwe ku wa 25/03/2010, Urukiko Rukuru, Urugereko rwa Musanze, rwasanze mu gihe abakoranye amasezerano batayumvikanaho, Urukiko arirwo rufite inshingano zo kuyasobanura, bityo ko amasezerano yose CECR yakoranye na Nyirabukobwa Rhéna asheshwe, rwemeza ko ubutaka bwubatseho ishuri CO.C.BI n'inyubako ziburiho ari iby'umuryango wa Nyirabukobwa Rhéna na Ngerageze Edson. CECR yategetswe gusenya inyubako yitwa M ku gishushanyo igatwara ibikoresho yakoresheje, naho Nyirabukobwa Rhéna ategekwa guha CECR 8.452.240 Frw yasobanuwe muri urwo rubanza.

[5] CECR yajuririye mu Rukiko rw'Ikirenga, ariko ku wa 30/05/2011, yandikira Urukiko irumenyesha ko ihagaritse urubanza kubera ko yumvikanye n'uwo baburana.

[6] Iburanisha ku guhagarika urubanza RCAA 0026/10/CS ryabaye ku wa 13/09/2011, mu iburanisha Me Rudakemwa Jean Félix waburaniraga CECR avuga ko ababuranyi bumvikanye, bityo ko aretse ikirego. Me Nsengiyumva Straton waburaniraga Nyirabukobwa Rhéna nawe avuga ko yemera ukureka ikirego kwakozwe na CECR, Urukiko rufatira icyemezo mu ntebe, rwemeza ko hashingiwe ku biteganywa n'ingingo ya 21 y'Itegeko N° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rusanga ukureka ikirego kwa CECR gukwiye kwemerwa kuko guhuye n'ibyo amategeko ateganya.

[7] Ku wa 07/02/2022, CECR yatanze ikirego gikosoza urubanza RCAA 0026/10/CS, ivuga ko muri urwo rubanza, Urukiko rw'Ikirenga rwibeshye rukavuga ko haretswe ikirego nyamara CECR yari yasabye kureka urubanza.

[8] Iburanisha ry'urubanza ryashyizwe ku wa 12/04/2022, ribera mu nama y'abacamanza bitabaye ngombwa guhamagara umuburanyi, hashingiwe ku biteganywa n'ingingo ya 140, igika cya mbere[1], n'ingingo ya 190, igika cya kabiri[2], z'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Muri uru rubanza ikibazo cyasuzumwe ni ukumenya niba mu rubanza RCAA 0026/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/09/2011 harimo ikosa ry'imyandikire rigomba gukosorwa.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba mu rubanza RCAA 0026/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/09/2011 harimo ikosa ry'imyandikire rigomba gukosorwa

[9] Me Rudakemwa Jean Félix avuga ko nyuma y'uko Communauté des Eglises Chrétiennes au Rwanda (CECR) yahindutse Communauté des Eglises Chrétiennes en Afrique (CECA) aburanira ijuririye Urukiko rw'Ikirenga, yakoranye amasezerano yo kwikiranura na Nyirabukobwa Rhéna, bituma isaba kureka urubanza. Avuga ko mu gika cya kane cy'imiterere y'urubanza RCAA 0026/10/CS, Urukiko narwo rwibukije ko icyasabwe ari ukureka urubanza, ndetse byongera gushimangirwa na Me Nsengiyumva Straton waburaniraga Nyirabukobwa Rhéna mu iburanisha ryabaye ku wa 13/09/2011, ariko mu gufata icyemezo, Urukiko ruvuga ko CECR iretse ikirego nyamara icyasabwe ari ukureka urubanza, ariyo mpamvu asaba ko iryo kosa ryakosorwa ahanditse kureka ikirego hakandikwa kureka urubanza.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 140 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 urubanza rukosora urundi, rukosora gusa amakosa y'imyandikire.

---

[1] Ikirego gikosora cyangwa gisobanura urubanza kiburanishwa nk'inyandiko nsobanurakirego itanzwe n'umuranyi umwe. Urubanza rukosora urundi, rukosora gusa amakosa y'imyandikire.

[2] Umucamanza washyikirijwe ikirego, aragisuzuma, yasanga ari ngombwa ko ahamagaza uwagitanze n'abandi bose abona ko bashobora kuza muri icyo kibazo akabahamagaza. Agomba kubumva mu gihe kitarenze iminsi ibiri (2) ikirego gitanzwe.

[11] Mu rubanza rwa Musefano Juvens, uru Rukiko rwasanze iyi ngingo yumvikanisha ko gukosora amakosa y'imyandikire bitagomba kugira icyo bihindura ku cyemezo cyafashwe, ndetse ko hakosorwa amakosa yakozwe n'Urukiko aho gukosora amakosa yakozwe n'umuburanyi keretse mu gihe Urukiko rwasubiye mu makosa y'umuburanyi kandi byari gushoboka ko ruyabona rukayakosora iyo rugenzura neza[3]. Muri urwo rubanza uru Rukiko rwashyizeho imirongo ikurikira:

- Gukosora amakosa y'imyandikire ntibigomba kugira icyo bihindura ku cyemezo cyafashwe.
- Amakosa akosorwa ni ayakozwe n'umucamanza si ayakozwe n'umuburanyi. Hashobora ariko kubaho irengayobora nk'igihe umucamanza yasubiye mu makosa yakozwe n'umuburanyi kandi yashoboraga kuyabona akayakosora iyo agenzura neza[4].

[12] Ku birebana n'uru rubanza, inyandiko zigize dosiye zigaragaza ibi bikurikira:

- CECA yakoranye amasezerano yo kwikiranura n'umuryango wa Nyirabukobwa Rhéna na Ngerageze Edison ku wa 03/05/2011, ingingo ya 11 n'iya 12 z'ayo masezerano zigira ziti: 11. Impande zombi zemeranije ko, hakurikijwe aya masezerano, zihagaritse urubanza RCA 0445/09/HC/MUS rwari rwarajuririwe mu Rukiko rw'Ikirenga; 12. Impande zombi zemeranyije ko bitarenze ukwezi kwa gatanu bazaba bahagaritse urubanza rwavuzwe mu ingingo ya 11.
- Ibaruwa yo ku wa 30/05/2011 Bishop Enoch B. Dusingizimana mu izina rya CECA na Bizimana Labani uhagarariye umuryango wa Nyirabukobwa Rhéna bandikiye inteko iburanisha urubanza RCAA 0026/10/CS bagira bati: impande zombi ziburana muri urwo rubanza zibandikiye zisaba ko mwahagarika urubanza RCAA 0026/10/CS kubera ko zikiranuye…
- Inyandiko-mvugo y'iburanisha ryo ku wa 13/09/2011 igira iti: watanze ubujurire (CECR) asobanura ko yaretse ikirego kuko ababuranyi bumvikanye. Impande zombi zirumvikanye zihita zifata icyemezo cyo kureka ikirego ndetse zihita zandikira uru Rukiko ko baretse ikirego, bityo bashingiye kuri art 21 CPCCAS bakaba baretse ikirego.

[13] Urukiko rurasanga nta na hamwe mu nyandiko yo ku wa 03/05/2011 cyangwa iyo ku wa 30/05/2011, CECR yasobanuye ko icyo yifuza ari ukureka ubujurire, ahubwo yavugaga ko yifuza guharika urubanza, aya magambo akaba ntaho akoreshwa mu Itegeko, bivuze ko ubwayo ntawayitiranya no kureka ubujurire cyangwa kureka ikirego. Igisobanuro cy'icyifuzo cyayo, CECR yagitangiwe na Me Rudakemwa Jean Félix wari uyihagarariye mu iburanisha ryabaye ku wa 13/09/2011, aho yavuze mu buryo budashidikanywaho ko icyo yifuza ari ukureka ikirego nk'uko biteganywa n'ingingo ya 21 y'Itegeko N° 18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga icyo gihe.

[14] Urukiko rurasanga kureka ikirego byasabwe mu iburanisha rimaze kuvugwa no kureka ubujurire bisabwa muri uru rubanza bitakwitiranywa kuko uretse kuba bigengwa n'ingingo z'amategeko zitandukanye, n'ingaruka zabyo si zimwe. Ku bijyanye n'uru rubanza, ingingo ya 21, igika cya mbere, y'Itegeko y'Itegeko N° 18/2004 ryo ku wa 20/6/2004 ryavuzwe haruguru yashingiweho urubanza rusabirwa gukosorwa rucibwa yateganyaga ko kureka ikirego (ari)

[3] Reba urubanza RS/RECT/RC 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/02/2022, igika cya 10.
[4] Reba urubanza RS/RECT/RC 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/02/2022, igika cya 11.

ukwiyambura ububasha bwo kuburana. Bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Ukwemera k'undi muburanyi si ngombwa. Naho ingingo ya 131, igika cya mbere, y'iryo Tegeko ikavuga ko urega aba aretse urubanza iyo yamaze kururegera hanyuma akareka kuruburana, uwo yaregaga akabyemera. Nta ngaruka bigira ku iremezo ry'urubanza, uburenganzira bwo kurega bugumaho ku buryo umuntu ashobora no kongera kurega.

[15] Urukiko rurasanga kureka urubanza cyangwa kureka ubujurire (*désistement d'instance ou désistement d'appel*) bivuze ko uwareze yiyemeje guhara uburenganzira ku rubanza yari yatangije, akabyemererwa n'uregwa. Bihesha uwaretse urubanza cyangwa ubujurire uburenganzira bwo kuzongera kurega mu gihe yaba abyifuje kandi akibyemerewe n'amategeko. Naho kureka ikirego bikorwa n'uwari wareze bitagombeye ko uregwa abyemera (*acte unilatéral*). Kuba uregwa yabyemeye nk'uko byagenze muri uru rubanza, sibyo bibihindurira kamere ngo ibyari ukureka ikirego bihinduke kureka ubujurire mu gihe icyifuzo cy'uwatangije ikirego ari ukukireka. Kureka ikirego bituma urega ahara uburenganzira bwe bwo kuzongera kurega, ni igikorwa gikomeye ahanini kiri mu nyungu z'uregwa kuko kimuhesha uburenganzira bwo kutazongera gukurikiranwa na rimwe kucyo yaregwaga. Iyo bikorewe mu bujurire biba bivuze ko uwari wajuriye yemeye imikirize y'urubanza rwajuririwe, bikamubuza kuzongera kurujuririra cyangwa kurusubirishamo[5].

[16] Urukiko rurasanga ibimaze gusobanurwa haruguru bihura n'ibyo rwemeje mu rubanza UWIMANA Auréa yaburanaga na Succession Kanyandekwe Saidi, aho rwavuze ko mu gihe uwari wajuriye avuze ko avanyeho ubujurire bwe mu nzira yo kureka ikirego (désistement d'action) ashingiye ku ngingo ya 21 y'Itegeko N° 18/2004 ryo ku wa 20/06/2004 ryavuzwe haruguru atari ngombwa ko uregwa abyemera[6].

[17] Hashingiwe ku bisobanuro bimaze gutangwa no ku murongo wibukijwe haruguru w'uko gukosora amakosa y'imyandikire bitagomba kugira icyo bihindura ku cyemezo cyafashwe, kandi ko hakosorwa amakosa yakozwe n'Urukiko aho kuba ayakozwe n'umuburanyi uretse igihe bigaragarira Urukiko ko iyo rugenzura neza rwashoboraga kubona ayo makosa, Urukiko rusanga kuba rwaremeje ko CECR iretse ikirego byaratewe n'uko aribyo yari yasabye mu iburanisha kandi nta kibuza ko ibihabwa, byumvikanisha ko nta makosa y'imyandikire ari mu rubanza RCAA 0026/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/09/2011 ku buryo yakosorwa.

[18] Urukiko rurasanga na none kureka ikirego biha inshingano ziremereye CECR kurusha izo yari kuba ifite iyo ireka ubujurire, binahesha Nyirabukobwa Rhéna uburenganzira buruta ubwo yari guhabwa iyo CECR ireka ubujurire. Uburenganzira byamuhesheje n'ubwo kutazongera gukurikiranwa na rimwe kucyo yaregwaga, bigashyira inshingano kuri CECR zo kwemera no gushyira mu bikorwa imikirize y'urubanza rwajuririwe uko rwakabaye kandi bikamubuza kuzongera kurujuririra cyangwa kurusubirishamo. Ibi byose byumvikanisha ko ibyo CECR isaba atari akantu koroshye ko gusimburanya amagambo ikirego n'urubanza gusa, ahubwo irasaba ihindurwa ry'icyemezo cy'Urukiko kuko gukora kuri rimwe muri ayo magambo bihindura mu buryo bugabanya cyangwa bwongera uburenganzira n'inshingano ababuranyi bari bafite hashingiwe ku cyemezo cyafashwe mu rubanza, ibi nabyo bigashimangira ko ikirego gikosoza nta shingiro gifite.

---

[5] Ku bijyanye n'itandukaniro hagati yo kureka urubanza, kureka ubujurire no kureka ikirego, reba Serge Guichard (eds), Droit et pratique de la procédure civile, Paris, Dalloz, 2014, kuva ku rupapuro rwa 113 kugeza ku rwa 1123.

[6] Reba urubanza RCAA 0078/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/03/2010, ibika bya 19 na 20.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko ikirego rwashyikirijwe na Communauté des Eglises Chrétiennes au Rwanda (CECR) yahindutse Communauté des Eglises Chrétiennes en Afrique (CECA) gisaba gukosora ikosa ry'imyandikire riri mu rubanza RCAA 0026/10/CS rwaciwe ku wa 13/09/2011, nta shingiro gifite.

[20] Rwemeje ko nta kosa ry'imyandikire ryakozwe muri urwo rubanza.