ISHYAKA RIHARANIRA DEMOKARASI NO KURENGERA IBIDUKIKIJE MU RWANDA (DGPR) v. LETA Y'U RWANDA

[Rwanda URUKIKO RW'IKIRENGA – RS/SPEC/0002/15/CS (Rugege, P.J., Nyirinkwaya, Mukanyundo, Hatangimbabazi, Munyangeri, Hitiyaremye, Gakwaya, Karimunda M. na Nyirandabaruta, J.) 09 Nzeri 2015]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Inshuti y'Urukiko – Ibisabwa kugirango usaba kuba inshuti y'urukiko (amicus curiae) abyemererwe – Umuntu cyangwa ikigo bashobora kwemererwa kuba inshuti y'Urukiko mu gihe bafite ubumenyi buhagije kandi buzana mu rubanza ikintu gishya ku buryo byafasha Urukiko kugera ku makuru no gufata umwanzuro ufite ireme.

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Inzitizi y'iburabubasha – Inshingano z'Inkiko zo guca urubanza – Ikirego gisaba isesengura ry'Itegeko Nshinga – N'ubwo nta Rukiko rwahawe ububasha mu buryo butaziguye bwo guca urubanza rwerekeye kuvanaho cyangwa guhagarika igikorwa gishobora kuba kinyuranyije n'Itegeko nshinga, inkiko nizo zifite inshingano yo guca imanza kandi ntizishobora kwiyambura ubwo bubasha ku mpamvu iyo ariyo yose – Urukiko rw'Ikirenga nirwo rufite ububasha bwo kuburanisha ibirego byerekeranye no gusobanura ingingo z'Itegeko Nshinga – Itegeko Nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 6 – Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 29 – Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, ingingo ya 93, iya 96, iya 145 n'iya 200.

Incamake y'ikibazo: Ishyaka Riharanira Demokarasi no Kurengera ibidukikije mu Rwanda (Democratic Green Party of Rwanda) rihagarariwe n'umuyobozi waryo, ryatanze ikirego mu Rukiko rw'Ikirenga riregamo Leta y'u Rwanda risaba ko Urukiko rwahagarika ibikorwa by'abantu bandikira Inteko Ishinga Amategeko basaba ko ingingo ya 101 y'Itegeko Nshinga yahinduka, Umukuru w'Igihugu akiyamamariza kuyobora Igihugu igihe cyose nta manda imuzitira gukomeza kuyobora. Centre for Human Rights Law Firm Ltd yandikiye Urukiko rw'Ikirenga isaba kuza muri uru rubanza nk'Inshuti y'Urukiko "amicus curiae".

Leta y'u Rwanda ivuga ko icyo cyifuzo cyo kuba inshuti y'urukiko kidakwiye kwakirwa kubera ko nta gishya bazaniye Urukiko, ko kandi atari inshuti z'Urukiko, kuko bari ku ruhande rwa GREEN PARTY bakaba rero badashobora kuba inshuti z'Urukiko mu gihe bafite uruhande babogamiyeho.

Leta y'u Rwanda na none yabyukije inzitizi y'iburabubasha ivuga ko GREEN PARTY itagaragaza aho ikirego yatanze gihurira n'ububasha bw'Urukiko rw'Ikirenga buteganywa n'ingingo ya 145 y'Itegeko Nshinga, ndetse bukanagenwa n'ingingo ya 28, 29, n'iya 30 z'Itegeko Ngenga Nº 03/2012/0L ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga. Inavuga ko nta gikorwa kijyanye n'amatora kiraba kugeza ubu ku buryo GREEN PARTY yashingira ku ngingo ya 29 y'Itegeko ryavuzwe haruguru ahubwo ikibazo kiri imbere y'urukiko kikaba ari imyumvire y'ingingo ya 101 na 193 z'Itegeko Nshinga, nyamara Urukiko rukaba ruburanisha ibibazo biriho, aho gusuzuma ibibazo bizavuka, bityo ko icyo Urukiko rushobora gusuzuma ari ibyakorwa mu gihe referendum yaba irimo kuba.

GREEN PARTY yiregura ivuga ko ingingo ya 29 y'Itegeko rigenga Urukiko rw'Ikirenga igaragaza ko Urukiko rufite ububasha bwo kuburanisha imanza zavutse ku matora na Referandum, ko kandi n'abadepite batangiye inzira iganisha kuri Referandum, kandi ko nta Rukiko ruba mu Rwanda rurinda Itegeko Nshinga (Constitutional Court) mu gihe mu Itegeko Nshinga hateganyijwe ko Perezida wa Repubulika ari we ushinzwe kuririnda bityo igihe ariwe utangiye kuryica, Urukiko rw'Ikirenga arirwo rumuburanisha. Ikindi ngo ni uko umucamanza adashobora kwanga guca urubanza yitwaje impamvu iyo ari yo yose n'iyo ntacyo itegeko ryaba riteganya, kandi na none Urukiko rwaregewe rukaba ari rwo rukwiye kuvuga urukiko rufite ububasha bwo kuburanisha ikirego rwaregewe mu gihe rwasanga rudafite ububasha.

Incamake y'icyemezo: 1. Umuntu cyangwa ikigo bashobora kwemererwa kuba Inshuti y'Urukiko mu gihe bafite ubumenyi bwafasha Urukiko kugera ku makuru no gufata umwanzuro ufite ireme. Ibyo Centre for Human Rights Law Firm Ltd ishaka kugeza ku Rukiko ntaho bitandukaniye n'ibyasabwe na GREEN PARTY kandi bigaragara ko nta n'ubumenyi bwihariye cyangwa ubushakashatsi yakoze ku kirego cya GREEN PARTY, bityo ikaba itakwemererwa kuba inshuti y'Urukiko.

2. Kuba Urukiko rw'Ikirenga arirwo rufite ububasha bwo gufata icyemezo ku birego birebana n'amategeko anyuranyije n'Itegeko Nshinga kandi Inkiko zikaba zidashobora kwiyambura ububasha n'inshingano zifite byo guca imanza ku mpamvu iyo ariyo yose; biha Urukiko rw'Ikirenga ububasha bwo kuburanisha ibirego byerekeranye no gusobanura ingingo z'Itegeko Nshinga.

Icyifuzo cyo kuba inshuti y'urukiko nticyakiriwe.
Inzitizi y'iburabubasha nta shingiro ifite.
Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha ibirego birebana n'Itegeko Nshinga no gusobanura ingingo zaryo.
Iburanisha ry'urubanza mu mizi rizakomeza.
Amagarama y'urubanza arasubitswe.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, ingingo ya 93, iya 96, iya 145 n'iya 200.

Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingigo ya 29.

Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 6.

Itegeko Nshinga rya Kenya, 2010, ingingo ya 22, 23 na 165.

Itegeko Nshinga rya Repubulika ya Uganda, 1995 nk'uko ryahinduwe mu mwaka wa 2005, ingingo ya 137.

Itegeko Nshinga rya Repubulika ya Mauritius, ingingo ya 85.

Itegeko Nshinga rya Repubulika y'Afrika y'Epfo, 1996, ingingo ya 167.

Imanza zifashishijwe:

Ubushinjacyaha v. Uwimana Nkusi n'undi, rwaciwe n'Urukiko rw'Ikirenga kuwa 05/04/2012.

Communications Commission vs Royal Media Services [2014] KLR. rwaciwe n'Urukiko rw'Ikirenga rwa Kenya.

Marbury v. Mandison, 5 U.S. 137 (1803), rwaciwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe z'Amerika.
City of Boerne vs Flores, 117 S.CT 2157, rwaciwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe z'Amerika.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ishyaka Riharanira Demokarasi no Kurengera ibidukikije mu Rwanda (Democratic Green Party of Rwanda), [muri uru rubanza rikaba riri bwitwe GREEN PARTY mu magambo magufi], ryatanze ikirego mu Rukiko rw'Ikirenga rivuga ko hari abantu bandika amabaruwa bakayashyikiriza Inteko Ishinga Amategeko basaba ko ingingo ya 101 y'Itegeko Nshinga yahinduka, Umukuru w'Igihugu akiyamamariza kuyobora Igihugu igihe cyose nta manda imuzitira gukomeza kuyobora. Ishyaka GREEN PARTY ryatanze ikirego muri uru Rukiko risaba ko iyo ngingo ya 101 y'Itegeko Nshinga itahinduka. Iburanisha ry'urubanza ryari ryashyizwe ku itariki ya 8/07/2015, kuri uwo munsi urubanza ntirwaburanishwa bitewe nuko Ishyaka GREEN PARTY ritari rifite avoka uriburanira. Green Party yasabye ko urubanza rusubikwa mu gihe cy'amezi atandatu kugirango ishake avoka uzayiburanira, ariko Urukiko rusanga icyo gihe cyose kidakenewe, iburanisha ryarwo ryimurirwa ku itariki ya 29/07/2015.

[2] Ku itariki ya 23/07/2015, mu izina ry'ishyaka GREEN PARTY, Me Mukamusoni Antoinette yatanze imyanzuro y'inyongera ku kirego cyatanzwe n'iryo shyaka. Ku itariki ya 24/07/2015, Centre for Human Rights Law Firm Ltd yandikiye Urukiko rw'Ikirenga isaba kuza muri uru rubanza nka "amicus curiae", igashyigikira ikirego cyatanzwe n'ishyaka GREEN PARTY cyo gusaba Urukiko ko rwakwemeza ko ihindurwa ry'ingingo ya 101 y'Itegeko Nshinga irebana na manda za Perezida wa Repubulika ritemewe.

[3] Ku itariki ya 29/07/2015, iburanisha ryakomereje mu ruhame, Green Party ihagarariwe na Dr Habineza Frank Perezida waryo, yunganiwe na Me Mukamusoni Antoinette, naho Leta y'u Rwanda ihagarariwe na Me Rubango Epimaque, Me Malala Aimable bafatanyije na Me Mbonera Théophile. Urukiko rwabanje gusuzuma ubusabe bwa Centre for Human Rights Law Firm Ltd bwo kuba amicus curiae muri uru rubanza.

[4] Ku bijyanye n'ibyasabwe na Centre for Human Rights Law Firm Ltd ko yaba *Amicus Curiae* muri uru rubanza, abahagarariye Leta bavuze ko ubusabe bwayo budakwiye kwakirwa kubera ko nta gishya bazaniye Urukiko, ko kandi atari inshuti z'Urukiko, ko ahubwo bari ku ruhande rwa GREEN PARTY, ko rero badashobora kuba inshuti z'Urukiko mu gihe bafite uruhande babogamiyeho.

[5] Urukiko rwasuzumye ubwo busabe rusanga n'ubwo ibya Amicus Curiae bidateganyijwe mu mategeko y'u Rwanda, Urukiko rwarabifasheho umwanzuro mu rubanza RPA 0061/11/CS MP vs Uwimana Nkusi Agnes na Mukakibibi Saidati aho rwemeje ko ari byiza kwemerera umuntu cyangwa ikigo gifite ubumenyi bwihariye bwafasha urukiko kugera ku makuru no ku gufata umwanzuro ufite ireme. Ku busabe bwa Centre for Human Rights Law Firm Ltd bwo kuba amicus curiae, Urukiko rwemeje ko itabyemererwa bitewe n'uko ibyo yashatse kugeza ku Rukiko bidatandukanye n'ibyasabwe na GREEN PARTY uretse kubivuga gusa mu yandi magambo, ko nta bumenyi bwihariye ifite ku kirego GREEN PARTY yatanze ko kandi nta n'ubushakashatsi yakoze kuri icyo kibazo, ndetse ko nta kintu

gishya usaba kuba Amicus Curiae yazanye cyafasha muri uru rubanza, bityo ko rukwiye gukomeza nta “amicus curiae” uhari.

[6] Mbere y’uko urubanza ruburanishwa mu mizi, ababuranira Leta babyukije inzitizi y’iburabubasha, bavuga ko GREEN PARTY itagaragaza aho ikirego yatanze gihurira n’ububasha bw’Urukiko rw’Ikirenga. GREEN PARTY ivuga ko ububasha bw’Urukiko rw’Ikirenga ibushingira ku ngingo ya 29(3°) y’Itegeko Ngenga N° 03/2012/0L ryo kuwa 13/06/2012 rigena imiterere, imikorere, n’ububasha by’Urukiko rw’Ikirenga, iteganya ko Urukiko rw’Ikirenga arirwo rufite ububasha bwo guca imanza zerekeye amatora ya referendumu, aya Perezida wa Repubulika n’ay’abagize Inteko Ishinga Amategeko, maze icyo kibazo kiba aricyo kigibwaho impaka.

II. IKIBAZO KIGIZE URUBANZA

Kumenya niba Urukiko rw’Ikirenga nta bubasha rufite bwo gusobanura ingingo z’Itegeko Nshinga.

[7] Me Mbonera Théophile, Intumwa ya Leta, avuga ko ububasha bw’Urukiko rw’Ikirenga buteganywa n’ingingo ya 145 y’Itegeko Nshinga, ndetse bukanagenwa n’ingingo ya 28, 29, n’iya 30 z’Itegeko Ngenga N° 03/2012/0L ryo kuwa 13/06/2012 rigena imiterere, imikorere, n’ububasha by’Urukiko rw’Ikirenga, Green Party ikaba itagaragaza aho ikirego yatanze gihurira n’ububasha bw’Urukiko rw’Ikirenga nkuko buteganywa n’amategeko, bityo akaba asanga ikirego cya Green Party kitagomba kwakirwa.

[8] Asobanura ko ingingo ya 29(3) y’Itegeko Ngenga N° 03/2012/0L ryo kuwa 13/06/2012 rigena imiterere, imikorere, n’ububasha by’Urukiko rw’Ikirenga ivuga ibirebana n’amatora kandi kugeza ku munsi urubanza rwaburanishirijweho, nta gikorwa kijyanye n’amatora ya referendum kigeze kibaho, ibyo Inteko Ishinga Amategeko yakoze bikaba bijyanye n’ubushakashatsi bugamije kureba niba iyo referendum yakorwa.

[9] Avuga kandi ko ikibazo kiri imbere y’Urukiko rw’Ikirenga ari imyumvire y’ingingo ya 101 na 193 z’Itegeko-Nshinga, naho ibirebana n’amatora bikaba bitarigeze byemezwa, ko nta na referendum kuri manda ya gatatu ya Perezida wa Repubulika irabaho bityo Urukiko rw’Ikirenga rukaba nta bubasha rufite kuri iki kibazo.

[10] Asoza avuga ko koko Urukiko rw’Ikirenga rufite inshingano yo kubumbatira Itegeko-Nshinga mu buryo amategeko yabiteganyije harimo no kureba ko amategeko asohotse atanyuranyije naryo, rwasanga hari amategeko anyuranyije naryo rukayakuraho ariko ko ikibazo rufiteubu atari uko kimeze, ahubwo ikigomba gusuzumwa ari ububasha bw’Urukiko mu bijyanye no gusobanura Itegeko Nshinga.

[11] Me Malala Aimable, Intumwa ya Leta, avuga ko ingingo ya 29 y’Itegeko ry’Urukiko rw’Ikirenga abarega bashingiyeho batanga ikirego ntaho ihuriye n’ububasha bw’Urukiko rw’Ikirenga bwo kuburanisha uru rubanza kubera ko icyo iteganya ari uko hagomba kubanza kubaho amatora, ko kwemeza ubusabe bw’abaturage atari amatora; kuba rero nta matora yigeze abaho n’Urukiko rw’Ikirenga ntaho rwakura ububasha bwo kuburanisha uru rubanza.

[12] Asoza avuga ko ibyo GREEN PARTY ishaka kugaragaza ari uko hari icyuho mu mategeko (vide juridique) kandi nyamara umushingamategeko yarateganyije buri kintu cyose, ko niba Green Party ishaka ubusobanuro mpamo bw’Itegeko Nshinga, bisabwa Inteko Ishinga Amategeko nayo ikaba yasaba Urukiko rw’Ikirenga kugira icyo rubivugaho.

[13] Me Rubango Epimaque, Intumwa ya Leta, avuga ko iyo usomye ingingo ya 29 y'Itegeko rigenga Urukiko rw'Ikirenga nta hantu Urukiko rw'Ikirenga rwahawe ububasha bwo kuburanisha ibi birego, Urukiko rukaba ruburanisha ibibazo biriho, ariko ko rudasuzuma ibibazo bizavuka. Akomeza avuga ko icyo Urukiko rwasuzuma mu bubasha bwarwo ari ibyakorwa mu gihe referendum yaba irimo kuba, niba kandi ari inama basaba Urukiko rw'Ikirenga GREEN PARTY yagombye kubikora yisunze ibiteganywa n'ingingo ya 96 y'Itegeko Nshinga, ko rero Urukiko rw'Ikirenga rukwiye kwemeza ko iki kibazo cyakemukira mu zindi nzira.

[14] Asoza avuga ko ibijyanye no gusobanura amategeko bikorwa n'inzego ebyiri zitandukanye, ubusobanuro mpamo bukorwa n'Inteko-Ishinga Amategeko, naho ibijyanye no guhindura Itegeko-Nshinga iyo harebwe ingingo ya 96 yaryo bikaba bitari mu bubasha bw'Urukiko rw'Ikirenga uretse mu gihe haba harimo gusaba gusobanura icyo amategeko avuga, ariko ari ugusaba ubusobanuro mpamo byakorwa n'Inteko Ishinga Amategeko. Asanga ibyerekeye gusobanura icyo amategeko avuga bikorwa n'Urukiko rw'Ikirenga naho isobanurampamo rigakorwa n'Inteko Ishinga Amategeko.

[15] Dr Habineza Frank, Perezida wa GREEN PARTY, avuga ko ingingo ya 29 y'Itegeko rigenga Urukiko rw'Ikirenga igaragaza ko Urukiko rufite ububasha bwo kuburanisha imanza zavutse ku matora na Referandum ko kandi, n'abadepite batangiye inzira iganisha kuri Referandum, ko uretse n'abadepite hari n'abaminisitiri bari muri Leta y'u Rwanda batangiye kubikangurira abaturage hakaba hari n'amashyaka ari mu ihuriro abikangurira abaturage Leta ikaba itarigeze ibihagarika, bikaba byumvikana rero ko ari Leta y'u Rwanda igomba kuregwa. Akomeza avuga ko iyo urebye ibikorwa, n'ibivugwa kuri radio no kuri televiziyo usanga ikigamijwe ari uguhindura Itegeko Nshinga ko kandi byarangije kwemezwa nk'uko abayobozi banyuranye bagenda babivuga, ko rero Urukiko rukwiye kubifataho icyemezo.

[16] Asoza avuga ko ibyo ababuranira Leta bavuga mu mwanzuro batanze ko GREEN PARTY yari kwiyambaza Inteko Ishinga amategeko ataribyo, kuko batari kuyiyambaza kandi 99% by'abayigize bose bari bashyigikiye ko Itegeko-Nshinga rihinduka, na GREEN PARTY ikaba yarandikiye Inteko Ishinga Amategeko isaba ko Itegeko-Nshinga ritahindurwa ntiyasubizwa, bivuze ko rero inzira yo kuregera Urukiko ariyo yari isigaye.

[17] Me Mukamusoni Antoinette wunganira GREEN PARTY we avuga ko inzitizi yatanzwe n'uburanira Leta nta shingiro ifite, harebwe ibiteganywa n'ingingo ya 98 y'Itegeko Nshinga rya Repubulika y'u Rwanda, ko nta Rukiko ruba mu Rwanda rurinda Itegeko Nshinga (Constitutional Court), nyamara muri iyi ngingo hakaba havugwa ko ari Perezida wa Repubulika ushinzwe kurinda Itegeko Nshinga ko rero iyo atangiye kuryica, Urukiko rw'Ikirenga arirwo rumuburanisha.

[18] Avuga ko ingingo ya 6 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko umucamanza adashobora kwanga guca urubanza yitwaje impamvu iyo ari yo yose, n'iyo ntacyo itegeko ryaba riteganya, ridasobanutse mu buryo bwumvikana cyangwa ridahagije. Yemeza ko n'ikirego cya GREEN PARTY kiri mu bubasha bw'Urukiko rw'Ikirenga, ko kandi ruramutse rusanze ikirego kitari mu bubasha bwarwo rwagombye kuvuga Urukiko rufite ububasha.

[19] Me Mukamusoni akomeza avuga ko ibivugwa n'abahagarariye Leta ko Urukiko rw'Ikirenga rudafite ububasha atari byo kuko Urukiko rwaregewe ari rwo rukwiye kuvuga urukiko rufite ububasha bwo kuburanisha ikirego cyatanzwe na GREEN PARTY, kandi ko

icyiza ari uko baje kuburana uru rubanza Inteko Ishinga Amategeko yatangiye gusuzuma ibirebana no guhindura Itegeko Nshinga, ko rero Urukiko rw'Ikirenga nk'umujyanama wa Leta rwagombye gutanga inama yo guhagarika ibyo bikorwa, ibi rukabikora rukurikije ingingo ya 96 y'Itegeko Nshinga.

[20] Akomeza avuga ko kandi niba Perezida wa Repubulika ari we ushinzwe kurinda Itegeko Nshinga akaba kandi aregwa mu Rukiko rw'Ikirenga mu gihe yishe iryo Tegeko Nshinga byumvikana ko no mu gihe ryaba rigiye guhindurwa ari Urukiko rw'Ikirenga rukwiye kuregerwa. Ikindi avuga ni uko nk'uko babisobanuye mu myanzuro yabo nta Rukiko mu Rwanda rurinda Itegeko Nshinga ruriho, mu gihe ryaba ryishwe abantu baregera Urukiko rw'Ikirenga kuko arirwo rufite ububasha bwo kubuza ko rihohoterwa.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 29(3º) y'Itegeko Ngenga Nº 03/2012/0L ryo kuwa 13/06/2012 rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga iteganya ko Urukiko rw'Ikirenga arirwo rufite ububasha bwo guca imanza zerekeye amatora ya referendumu. Ikirego cyatanzwe na GREEN PARTY isaba Urukiko kwemeza ko ingingo ya 101 n'iya 193 z'Itegeko Nshinga zidatanga uburenganzira bwo guhindura manda ya Perezida wa Repubulika, ntaho gihuriye n'imanza zerekeye amatora ya referendumu, bityo n'Urukiko ntirwashingira ku ngingo ya 29(3) ivugwa muri iki gika ngo rwemeze ko rufite ububasha bwo kuburanisha uru rubanza.

[22] Ingingo ya 29(1º) y'Itegeko Ngenga Nº03/2012/0L ryo kuwa 13/06/2012 rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga ivuga ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha Perezida wa Repubulika kubera kwica Itegeko Nshinga bikomeye kandi nkana. Nk'uko byavuzwe, ikirego muri uru rubanza ni ukwemeza ko ingingo ya 101 n'iya 193 z'Itegeko Nshinga zidatanga uburenganzira bwo guhindura manda ya Perezida wa Repubulika. Iki kirego cyatanzwe na GREEN PARTY kikaba gitandukanye n'ikirego cyashyikirizwa urukiko haregwa Perezida wa Repubulika kwica Itegeko Nshinga. Urukiko rw'Ikirenga rukaba rutashingira ku ngingo ya 29(1) ivugwa muri iki gika, ngo rwemeze ko rufite ububasha bwo kuburanisha ikirego cyatanzwe na GREEN PARTY.

[23] Uruhande rw'abahagarariye Leta, ruvuga ko Urukiko rw'Ikirenga rudafite ububasha bwo gutanga ibisobanuro by'ingingo z'Itegeko Nshinga ko ahubwo, ubwo bubasha bufitwe n'Inteko Ishinga Amategeko aho buteganywa n'ingingo ya 96 y'Itegeko Nshinga ivuga ko "isobanurampamo ry'amategeko rikorwa n'imitwe yombi y'Inteko iteraniye hamwe, Urukiko rw'Ikirenga rumaze kubitangaho inama; buri Mutwe ufata icyemezo ku bwiganze bw'amajwi buvugwa mu ngingo ya 93 y'iri Tegeko Nshinga [……]".

[24] Ingingo ya 93, igika cya gatatu n'icya kane, y'Itegeko Nshinga igira iti "[….] amategeko asanzwe atorwa ku bwiganze burunduye bw'amajwi y'abagize buri mutwe bitabiriye inama. Amategeko ngenga atorwa ku bwiganze bwa bitatu bya gatanu (3/5) by'abagize buri Mutwe bitabiriye inama …". Amategeko avugwa mu ngingo ya 93, ni amategeko asanzwe (ordinary laws) n'amategeko ngenga (organic laws). Aya mategeko avugwa mu ngingo ya 93 niyo Inteko Ishinga Amategeko ifitiye ububasha bwo gukorera isobanurampamo. Bityo ibivugwa n'ababuranira Leta muri uru rubanza ko Inteko Ishinga Amategeko ariyo ifite ububasha bwo gukora isobanurampamo, bikaba bifite ishingiro ku mategeko asanzwe n'amategeko ngenga. Ku birebana n'Itegeko Nshinga, akaba nta rwego ruvugwa rwahawe ububasha bwo gutanga ibisobanuro by'ingingo zaryo.

[25] Urukiko rusanga ikibazo muri uru rubanza atari ukumenya niba Inteko Ishinga Amategeko ifite ububasha bwo gukora isobanurampamo ku ngingo z'Itegeko Nshinga, ahubwo ari ukumenya niba Urukiko rw'Ikirenga rufite ububasha bwo gusuzuma ikirego cyerekeranye no gusesengura Itegeko Nshinga ariko kidasaba gukuraho itegeko cyangwa ingingo y'itegeko inyuranije naryo.

[26] Mu bigaragara, nta rukiko rwahawe ububasha mu buryo butaziguye bwo guca urubanza rw'uwareze asaba kuvanaho cyangwa guhagarika igikorwa avuga ko kinyuranye n'Itegeko Nshinga. Nubwo bimeze gutyo, icyumvikana nuko inkiko arizo zifite inshingano yo guca imanza ndetse zikaba zidashobora kwiyambura ubwo bubasha ku mpamvu iyo ariyo yose. Ihame rusange nuko urukiko rudashobora kwanga guca urubanza rwitwaje ko ntacyo itegeko rivuga ku kirego rwashyikirijwe. Ibi bishimangirwa n'ingingo ya 6, igika cya 3 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi aho igira iti "[…..]. Abacamanza ntibashobora kandi kwanga guca urubanza bitwaje impamvu iyo ari yo yose, n'iyo ntacyo itegeko ryaba riteganya, ridasobanutse mu buryo bwumvikana cyangwa ridahagije…". Inkiko nizo zifite ububasha n'inshingano byo guca imanza, igisigaye ni ukumenya urukiko rufite ububasha bwo kuburanisha ikirego cy'uwareze asaba kuvanaho cyangwa guhagarika igikorwa avuga ko kinyuranye n'Itegeko Nshinga nk'uko GREEN PARTY ibisaba.

[27] Itegeko Nshinga mu ngingo yaryo ya 145(3^{o}) n'Itegeko Ngenga N^{o}03/2012/0L ryo kuwa 13/06/2012 rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga mu ngingo yaryo ya 29(2^{o}) biha Urukiko rw'Ikirenga ububasha bwo gufata icyemezo ku birego birebana n'uko amasezerano mpuzamahanga, amategeko ngenga, amategeko n'amategeko-teka anyuranye n'Itegeko Nshinga. Itegeko Nshinga ryemera ko itegeko ryose rinyuranye naryo ritagira agaciro ndetse rikanaha ububasha Urukiko rw'Ikirenga bwo gufata icyemezo ku birego birebana n'amategeko anyuranye naryo. Muri bene izo manza, Urukiko rusobanura itegeko cyangwa ingingo z'amategeko zisabirwa kuvanwaho, zikagereranywa n'ingingo z'Itegeko Nshinga.

[28] Nyamara haba mu Itegeko Nshinga haba mu itegeko rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, nta hagaragara Urukiko cyangwa urundi rwego rwahawe ububasha bwo kuburanisha ibirego bisaba gukuraho igikorwa kinyuranye n'Itegeko Nshinga kivugwa mu ngingo ya 200 yaryo igihe cyaba gitanzwe.

[29] Mu bihugu nka Kenya na Uganda biri mu karere k'Afurika y'Iburasirazuba u Rwanda ruhererereyemo, inkiko nkuru nizo zifite ububasha bwo kuburanisha ibirego byose zishyikirijwe bireba ingingo z'Itegeko Nshinga harimo no kuzisobanura. Mu Itegeko Nshinga rya Kenya ubwo bubasha buteganywa n'ingingo zaryo za 22, 23 n'iya 165 d[1] naho mu rya Uganda bugateganywa n'ingingo ya 137[2].

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[1]*Article 23. (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights [……], article (165)(3) d. of the Constitution …… "the High Court shall have jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of: (i) the question whether any law is inconsistent with or in contravention of this Constitution;(ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution; ".* Ibiteganywa muri izi ngingo byashimangiwe mu rubanza rwa *Communications Commission Vs Royal Media Services [2014] e KLR at para 359&360 (Supreme Court of Kenya).*

[2] *Article 137 Questions as to the interpretation of the constitution.*

[30] Mu gihugu cy'Afrika y'Epfo, Urukiko rurinda Itegeko Nshinga (Constitutional Court) rw'icyo gihugu rufite ububasha bwo kuburanisha ibibazo byose bijyanye naryo kandi rukanagira ububasha bwo kurisobanura. *[167] 3) The Constitutional Court (a) is the highest court of the Republic; and (b) May decide (i) Constitutional matters; and (ii) any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court, and (c) makes the final decision whether a matter is within its jurisdiction [….] 7) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.*

[31] Muri Mauritius naho, ingingo ya 85 y'Itegeko Nshinga iha Urukiko rw'Ikirenga rw'icyo gihugu, ububasha bwo guca imanza zirebana no gusobanura ingingo z'Itegeko Nshinga ryacyo. Iyo ngingo ibivuga muri aya magambo "[……..] Where any question as to the interpretation of this Constitution arises in any court of law established for Mauritius (other than the Court of Appeal, the Supreme Court or a court martial) and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the Supreme Court".

[32] Inkiko z'ibihugu bimwe na bimwe zaciye imanza ku bibazo birebana n'Itegeko Nshinga kandi nta tegeko rihari rigena mu buryo buziguye ko arizo zifite ububasha bwo kuburanisha ibibazo birebana n'Itegeko Nshinga. Nko muri Leta Zunze Ubumwe z'Amerika, ibyo byabaye mu manza zimwe na zimwe, uruzwi cyane ni urwa *Marbury v. Madison*[3] rwo mu 1803, n'izindi manza zarukurikiye. Nko mu rubanza City *Boerne vs Flores*, Urukiko rw'Ikirenga rwo muri Leta Zunze Ubumwe z'Amerika rwavuze ko Inteko Ishinga Amategeko y'icyo gihugu ifite ububasha bwo gushyira mu bikorwa (enforcement) Itegeko Nshinga binyuze mu gutora amategeko ariko ko idafite ububasha bwo gufata icyemezo ko Itegeko Nshinga ryishwe, ahubwo ko ubwo bubasha bufitwe n'inkiko[4].

[33] Muri rusange, mu bindi bihugu imanza zirebana n'Itegeko Nshinga ziburanishwa n'Urukiko rw'Ikirenga cyangwa izindi nkiko nkuru zishinzwe kurinda Itegeko Nshinga (constitutional courts) bitewe n'igihugu. Izi nkiko nizo zifite ububasha bwo kuburanisha ibirego byose birebana n'Itegeko Nshinga.

[34] Hakurikijwe rero ibyasobanuwe mu bika bibanziriza iki, Urukiko rurasanga no mu Rwanda mu gihe Urukiko rw'Ikirenga arirwo rufite ububasha bwo gufata icyemezo ku birego birebana n'amategeko anyuranye n'Itegeko Nshinga, hakaba nta rukiko cyangwa urundi rwego rwahawe ububasha bwo kuburanisha ibirego byose birebana n'Itegeko Nshinga no kurisobanura, rufite n'ububasha bwo kuburanisha ibirego byerekeranye no gusobanura ingingo z'Itegeko Nshinga.

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(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.
(2) When sitting as a Constitutional Court, the Court of Appeal shall consist of a bench of five members of that Court.
(3) A person who alleges that-
(a) an Act of Parliament or any other law or anything or done under the authority of any law; or
(b) any act or omission by any person or authority is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.

[3] Marbury v. Madison, 5 U.S. 137 (1803)

[4] City of Boerne vs Flores, 117 S.CT 2157 at 2172

III. ICYEMEZO CY'URUKIKO

[35] Urukiko rw'Ikirenga rwemeye kwakira inzitizi y'iburabubasha yatanzwe n'abahagarariye Leta muri uru rubanza, ruyisuzumye rusanga nta shingiro ifite.

[36] Rwemeje ko uru Rukiko rufite ububasha bwo kuburanisha ibirego birebana n'Itegeko Nshinga no gusobanura ingingo zaryo.

[37] Ruvuze ko iburanisha ry'urubanza mu mizi rizakomeza ku wa 23/09/2015.

[38] Ruvuze ko amagarama y'urubanza asubitswe.