Re FAST TRUCK INTERIOR AND HARDWARE Ltd

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/RCOM 00001/2022/SC (Ntezilyayo, J.P., Nyirinkwaya, Hitiyaremye, Muhumuza na Karimunda, J.) 19 Gicurasi 2023]

Itegeko Nshinga – Itegeko rinyuranyije n'Itegeko Nshinga – Itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rigomba kuba ari itegeko rikiriho, rikoreshwa kandi rigikurikizwa – Iyo itegeko cyangwa ingingo yaryo bitakiriho cyangwa bitagikoreshwa, ikirego kiburirwa impamvu cyatangiwe, nticyakirwe.

Incamake y'ikibazo: Ubwo Urukiko Rukuru rw'Ubucuruzi rwasuzumaga ubujurire rwari rwashyikirijwe n'Ikigo cy'Igihugu gishinzwe Imisoro n'Amahôro (Rwanda Revenue Authority) mu rubanza RCOMA 00443/2021/HCC, Fast Truck Interior and Hardware Ltd iburana yabyukije ikibazo cy'itegeko rinyuranyije n'Itegeko Nshinga nk'inzitizi, avuga ko ingingo ya 64 y'Itegeko N° 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoresha inyuranyije n'Itegeko Nshinga.

Perezida w'Urukiko Rukuru rw'Ubucuruzi yandikiye Perezida w'Urukiko rw'Ikirenga amugezaho icyo kibazo ashingiye ku ngingo ya 74 y'Itegeko N˚ 30/2018 ryo ku wa 02/6/2018 rigena ububasha bw'Inkiko maze Ubwanditsi bw'Urukiko buracyakira gihabwa nomero. Leta y'u Rwanda yatanze inzitizi yo kutakira ikirego cyatanzwe na Fast Truck Interior and Hardware Ltd, ivuga ko kuba Itegeko ryavuzwe haruguru Fast Truck Interior and Hardware Ltd iregera ryaravuyeho, ridashobora kuregerwa ko rinyuranyije n'Itegeko Nshinga. Isobanura ko itegeko ritakiriho ridashobora kuregerwa ngo harebwe niba rinyuranyije cyangwa ritanyuranyije n'Itegeko Nshinga, kuko n'ubundi iyo Urukiko rusanze rinyuranyije n'Itegeko Nshinga, ingaruka ibaho ari uko rikurwaho. Kuba Urega avuga ko iryo tegeko ryamugizeho ingaruka n'ubwo ryavuyeho, bitaba impamvu yo kuregera ko rivaho kandi n'ubundi ritakiriho, cyane cyane ko ryamugizeho ingaruka kuko yakoze ibibujijwe na ryo igihe ryari ririho.

Fast Truck Interior and Hardware Ltd yiregura ivuga ko n'ubwo Itegeko ryavuzwe haruguru ryavuyeho, ariko ko ingingo ya 64 y'iryo Tegeko yakomeje gukurikizwa kubera ko ariyo Rwanda Revenue Authority yashingiyeho iyica umusoro ku nyongeragaciro. Kuba Inteko Ishinga Amategeko imenyeshwa mu gihe Urukiko rwaba rusanze ryari rinyuranyije n'Itegeko Nshinga, atari ngombwa kuko iryo tegeko ryavuyeho, ahubwo ko ryagira ingaruka ku byemezo byafashwe n'Urukiko hashingiwe kuri iryo tegeko bikwiye guseswa.

Incamake y'icyemezo: 1. Ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga cyakirwa iyo urega agaragaje itegeko anenga n'imigereka yaryo iyo ihari. rikavanwaho n'urukiko rubifitiye ububasha mu gihe rusanze koko ribangamiye uburenganzira bw'umuntu buteganywa n'Itegeko Nshinga.

2. Itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rigomba kuba ari itegeko rikiriho, rikoreshwa kandi rigikurikizwa. Iyo itegeko cyangwa ingingo yaryo bitakiriho cyangwa bitagikoreshwa, ikirego kiburirwa impamvu cyatangiwe, nticyakirwe. Bityo. Ikirego cyatanzwe na Fast Truck Interior and Hardware Ltd nticyakiriwe kuberako ingingo ya 64 y'Itegeko N° 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoresha, aregera ko rinyuranyije n'Itegeko Nshinga ntirikiriho.

Inzitizi ifite ishingiro.
Ikirego gisaba kwemeza ko ingingo y'itegeko inyuranye n'Itegeko Nshinga, nticyakiriwe.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe mu mwaka wa 2015, ingingo ya 29 n'iya 61.
Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, ingingo ya 98.
Itegeko N˚ 30/2018 ryo ku wa 02/6/2018 rigena ububasha bw'Inkiko, ingingo ya 72 n'iya 74.
Itegeko N° 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoresha, ingingo ya 30 n'iya 64.

Imanza zifashishijwe:
Speaker of the National Assembly and Another v. Land Access Movement of South Africa and Others [2019] ZACC 10, rwaciwe ku wa 19/03/2019.
Civil Appeal Nos. 823-827 of 2022 (Arising out of SLP (C) Nos.2001-2005 of 2021) point 16.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Fast Truck Interior and Hardware Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi, irega Rwanda Revenue Authority (RRA), isaba gukurirwaho umusoro ku nyongeragaciro (TVA) ungana n'amafaranga 32.258.138 ivuga ko yaciwe mu buryo bunyuranyije n'amategeko. Urwo Rukiko rwaciye urubanza RCOM 00257/2021/TC ku wa 12/05/2021 ruha ishingiro ikirego cyayo maze rwemeza ko uwo musoro usheshwe.

[2] Rwanda Revenue Authority yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi maze mu iburanisha ry'urubanza RCOMA 00443/2021/HCC, Me Hategeka Placide, uhagarariye Fast Truck Interior and Hardware Ltd abyutsa ikibazo cy'Itegeko rinyuranyije n'Itegeko Nshinga nk'inzitizi avuga ko ingingo ya 64 y'Itegeko N° 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoresha inyuranyije n'Itegeko Nshinga.

[3] Ashingiye ku ngingo ya 74 y'Itegeko N˚ 30/2018 ryo ku wa 02/6/2018 rigena ububasha bw'Inkiko, Perezida w'Urukiko Rukuru rw'Ubucuruzi yandikiye Perezida w'Urukiko rw'Ikirenga ku wa 28/12/2022, amugezaho icyo kibazo, Ubwanditsi bw'Urukiko bwakira icyo kibazo, cyandikwa kuri RS/INCONST/RCOM 00001/2022/SC maze isuzumwa ryacyo rishyirwa ku wa 25/01/2023, ariko uwo munsi ugeze urubanza ntirwaburanishwa bisabwe n'Intumwa ya Leta.

[4] Urubanza rwaburanishijwe mu ruhame ku wa 19/04/2023, Fast Truck Interior and Hardware Ltd yitabye ihagarariwe na Me Hategeka Placide naho Leta y'u Rwanda ihagarariwe na Me Kabibi Spéciose na Me Twahirwa Jean Baptiste.

[5] Mu myanzuro yayo ndetse no mu iburanisha, Leta y'u Rwanda yatanze inzitizi ivuga ko kuba Itegeko N˚ 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoreshwa Fast Truck Interior and Hardware Ltd iregera ryaravuyeho, ridashobora kuregerwa ko rinyuranyije n'Itegeko Nshinga, bityo ikirego cyayo kikaba kidakwiye kwakirwa.

[6] Mu gusubiza kuri iyo nzitizi, Me Hategeka Placide avuga ko Urukiko rw'Ikirenga rugomba gusuzuma ikirego cya Fast Truck Interior and Hardware Ltd kuko n'ubwo Itegeko N° 25/2005 ryavuzwe haruguru ryavuyeho, ariko ingingo ya 64 y'iryo Tegeko yakomeje gukurikizwa kubera ko ariyo Rwanda Revenue Authority yashingiyeho ica Fast Truck Interior and Hardware Ltd umusoro ku nyongeragaciro ungana n'amafaranga 32.258.138.

[7] Ikibazo kigomba gusuzumwa n'Urukiko, kikaba ari ukumenya niba itegeko ritakiriho rishobora kuregerwa ko rinyuranyije n'Itegeko nshinga.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba itegeko ritakiriho rishobora kuregerwa ko rinyuranyije n'Itegeko Nshinga

[8] Me Kabibi Spéciose uhagarariye Leta y'u Rwanda, avuga ko ingingo ya 98 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha iteganya ko Itegeko N° 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu n'ingingo zose z'amategeko abanziriza iri kandi zinyuranyije na ryo bivanyweho, ibi bikaba bivuze ko iryo Tegeko N° 25/2005 ryo ku wa 04/12/2005 ryaregewe ritakiriho.

[9] Akomeza avuga ko Itegeko ritakiriho ridashobora kuregerwa ngo harebwe niba rinyuranyije cyangwa ritanyuranyije n'Itegeko Nshinga, kuko n'ubundi iyo Urukiko rusanze rinyuranyije n'Itegeko Nshinga, ingaruka ibaho ari uko rikurwaho, bikamenyeshwa Inteko Ishinga Amategeko na Guverinoma, bikaba byumvikana ko bidashoboka gukuraho itegeko n'ubundi ritakiriho.

[10] Asobanura kandi ko muri bene ibyo birego, icyemezo cy'Urukiko rw'Ikirenga kiba ari "*ex-nunc*", bivuze ko kigira ingaruka kuva igihe cyafatiwe kikaba rero kidashobora kugira ingaruka ku byabaye mbere y'uko gifatwa.

[11] Agaragaza ko kuba urega avuga ko iryo tegeko ryamugizeho ingaruka n'ubwo ryavuyeho, bitaba impamvu yo kuregera ko rivaho kandi n'ubundi ritakiriho, cyane cyane ko ryamugizeho ingaruka kuko yakoze ibibujijwe n'iryo tegeko igihe ryari ririho.

[12] Ku kibazo cyo kumenya uburyo ababangamiwe n'ibikorwa bavuga ko binyuranyije n'Itegeko Nshinga babiregera, Me Kabibi Spéciose avuga ko ikirego cya Fast Truck Interior and Hardware Ltd cyatanzwe hisunzwe ingingo ya 74 y'Itegeko N° 30/2018 gitandukanye n'ibirego biregera ibikorwa binyuranye n'Itegeko Nshinga, kandi ko icyo gihe Urega yaba agiye guhindura ikirego, asaba Urukiko kuguma mu mbibi z'icyaregewe, rugahera ku gusuzuma niba bishoboka kuregera Itegeko N° 25/2005 ko rinyuranyije n'Itegeko Nshinga kandi ritakiriho.

[13] Atanga n'urugero rw'imanza zaciwe n'inkiko zo mu bindi bihugu, nko mu rubanza Civil Appeal Nos. 823-827 of 2022 (Arising out of SLP (C) Nos.2001-2005 of 2021) point 16, aho muri urwo rubanza hari Assam Act[1] yari yarasohotse mu mwaka wa 2004 maze mu mwaka wa 2012 hashyirwaho Manipular Act isa neza n'iya 2004 ari naryo ryaregewe mu Rukiko rw'Ikirenga rw'Ubuhinde ko rinyuranyije n'Itegeko Nshinga ndetse urwo Rukiko ruha ishingiro icyo kirego. Nyuma, haregerwa na none Itegeko ryo muri 2012 ko rinyuranyije n'Itegeko Nshinga hashingiwe kuri urwo rubanza rwaciwe ku rya 2004, ariko mu gihe Urukiko rwari rutarafata icyemezo, Inteko Ishinga Amategeko ikuraho itegeko rya 2012, irisimbuza irya 2018 maze Urukiko Rukuru ruca urubanza rwemeza ko Inteko Ishinga Amategeko itari ifite ububasha bwo kurisimbura kuko irya 2012 rinyuranyije n'Itegeko Nshinga. Urubanza rugeze mu Rukiko rw'Ikirenga rwemeza ko nyuma y'uko hatowe Itegeko ryo muri 2018 byumvikanisha ko Itegeko ryo muri 2012 ryavuyeho, Urukiko Rukuru rukaba rutaragombaga kureba ibijyanye n'isuzuma ry'uko iryo tegeko rinyuranyije n'Itegeko Nshinga kandi ryaravuyeho.

[14] Akomeza avuga ko ikibazo cyasuzumwe muri urwo rubanza rwaciwe n'Urukiko rw'Ikirenga gisa n'ikibazo Fast Truck Interior and Hardware Ltd yashyikirije uru Rukiko kuko Itegeko N°

[1] The Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004.

25/2005 ryo ku wa 04/12/2005 ryavuzwe haruguru iregera ryavuyeho, akaba ariyo mpamvu asaba uru Rukiko kwifashisha umurongo watanzwe n'Urukiko rw'Ikirenga rw'Ubuhinde rukemeza ko Itegeko ryavuyeho ridashobora kuregerwa ko rinyuranyije n'Itegeko Nshinga kuko riba ritakiriho.

[15] Me Twahirwa Jean Baptiste yamwunganiye avuga ko itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga kugira ngo ritakaze agaciro karyo, bikumvikana ko ibyo bishoboka gusa iyo iryo tegeko ryari rikigafite, ni ukuvuga rigikurikizwa; ko kuba rero itegeko ryaregewe ritakiriho, ridashobora kuregerwa ko rinyuranyije n'Itegeko Nshinga.

[16] Ku birebana n'ibisobanuro bya Fast Truck Interior and Hardware Ltd by'uko ryaregewe kuko rigikoreshwa mu kuyica imisoro, avuga ko icyo kibazo kitagakwiye gusuzumwa n'Urukiko rw'Ikirenga, ahubwo ibaye yararenganyijwe n'Itegeko N° 25/2005 ryo ku wa 04/12/2005 ryavuzwe haruguru, yazakiregera mu rubanza rw'imisoro.

[17] Mu kwiregura kuri icyo kibazo, Me Hategeka Placide avuga ko Fast Truck Interior and Hardware Ltd itaregeye Urukiko kwemeza ko ingingo ya 64 y'Itegeko N˚ 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoreshwa inyuranyije n'Itegeko Nshinga mu buryo busanzwe bene ibyo birego bitangwamo, ahubwo ko yagitanze nk'ikibazo cyavukiye mu iburanisha mu Rukiko Rukuru rw'Ubucuruzi (*question préjudicielle*).

[18] Akomeza asobanura ko impamvu Fast Truck Interior and Hardware Ltd yaregeye kwemeza ko ingingo ya 64 y'Itegeko N˚ 25/2005 ryavuzwe haruguru rinyuranyije n'Itegeko Nshinga n'ubwo ryavuyeho, ari uko Rwanda Revenue Authority yayiciye umusoro ariryo ishingiyeho nk'uko bigaragazwa n'inyandiko mvugo imenyesha amakosa yakozwe ku wa 13/10/2020 mu gika cyayo cya nyuma, kuko rireba ibikorwa yakoze mu gihe itegeko ryari rigifite ubuzima bwaryo, byumvikanisha ko n'ubwo bwose iryo tegeko ryavuyeho, ariko ryakomeje gukoreshwa, ku bw'ibyo, rikaba rishobora no kuregerwa ko rinyuranyije n'Itegeko Nshinga.

[19] Naho ku bijyanye no kumenyesha Inteko Ishinga Amategeko mu gihe Urukiko rwaba rusanze ryari rinyuranyije n'Itegeko Nshinga, avuga ko bitaba ngombwa kuko iryo tegeko ryavuyeho, ahubwo ko ryagira ingaruka ku byemezo byafashwe n'Urukiko hashingiwe kuri iryo tegeko bikwiye guseswa.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 72 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, igika cya 1, ivuga 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. Igika cya 2, ikavuga ko urega agomba gushyira ku mugereka w'inyandiko itanga ikirego kopi y'itegeko anenga n'imigereka yaryo iyo ihari. Naho igika cya 5, kikavuga ko iyo Urukiko rw'Ikirenga rwemeje ko iryo tegeko rinyuranyije n'Itegeko Nshinga, ruhita rubimenyesha mu nyandiko Inteko Ishinga Amategeko na Guverinoma. Icyo cyemezo gitangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda.

[21] Ingingo ya 74, igika cya mbere n'icya kabiri, y'Itegeko N°30/2018 ryavuzwe haruguru iteganya kandi ko Iyo Urukiko rw'Ikirenga ruburanisha izindi manza zitari izo kugenzura ko itegeko ritanyuranyije n'Itegeko Nshinga, hakabonekamo ikibazo cy'itegeko rinyuranyije n'Itegeko Nshinga, rugomba kubanza kugikemura mbere yo kuburanisha urubanza mu mizi yarwo. Iyo icyo kibazo kigaragaye, gitanzwe n'ababuranyi cyangwa urukiko rubyibwirije, mu iburanisha ry'urubanza mu nkiko zo hasi, izo nkiko zihita zihagarika iburanisha ry'urubanza rw'ibanze, zikohereza Urukiko rw'Ikirenga icyo kibazo kugira ngo rubanze rugifateho icyemezo.

[22] Nk'uko byibukijwe haruguru, ikibazo nyamukuru kiri muri uru rubanza impande zombi zirurimo zitumvikanaho, ni ukumenya niba itegeko ryavuyeho rishobora kuregerwa ko rinyuranyije n'Itegeko Nshinga, aho Intumwa za Leta zihamya ko bidashoboka, ariko uhagarariye Fast Truck Interior and Hardware Ltd we akavuga ko ntakibibuza mu gihe iryo tegeko ryakomeje gukoreshwa na nyuma y'uko rivuyeho ku bikorwa byabayeho rigikurikizwa.

[23] Urukiko rurasanga ikibazo kirebana no kuba itegeko ryavuyeho rishobora kuregerwa ko rinyuranyije n'Itegeko Nshinga cyarasuzumwe n'izindi nkiko z'ibindi bihugu zifite mu nshingano zazo kurinda Itegeko Nshinga.

[24] Urukiko rushinzwe Itegeko Nshinga rwo muri Afurika y'Epfo, mu rubanza Speaker of the National Assembly and Another v Land Access Movement of South Africa and Others [2019] ZACC 10, rwaciwe ku wa 19/03/2019, aho mu gika cya 8, uwaregeye ko itegeko ryavuyeho rinyuranyije n'Itegeko Nshinga yabishingiye ku mpamvu ebyiri: iya mbere ikaba yari ukuba NCOP[2] n'Abashingamategeko bo ku rwego rw'intara, mu bihe bitandukanye, batarubahirije ibiteganywa n'Itegeko Nshinga mu gice cyaryo cya 72(1)(a), kuko nta ruhare abaturage bagize mu itorwa ry'itegeko ryabanjirije itegeko rihindura iryavuyeho, maze mu gika cya 10, Urukiko rwemeza ko itegeko ryavuyeho riteshejwe agaciro, rushingiye ku ngingo ya mbere yari ikubiye mu mwanzuro w'urega.[3]

[25] Naho Urukiko rw'Ikirenga rwo mu Buhinde, mu rubanza rwanavuzwe haruguru mu myanzuro y'Intumwa ya Leta, rwemeje ko kuba itegeko ryavanyweho riba ritakiriho, Urukiko rudashobora gusuzuma niba rinyuranyije n'Itegeko Nshinga, bityo ko Urukiko Rukuru rwakoze ikosa mu kwemeza ko itegeko ryavanyweho rinyuranyije n'Itegeko Nshinga.[4]

[26] Urukiko rusanga ingero ebyiri z'imanza zaciwe n'Inkiko zo mu bindi bihugu zavuzwe haruguru, zigaragaza ko ikibazo cyo kumenya niba itegeko ryavanyweho rishobora kuregerwa ko rinyuranyije n'Itegeko Nshinga, kitarakemuwe kimwe n'izo nkiko; bityo mu gusuzuma ikirego rwashyikirijwe, rugiye kureba niba ukurikije ibiteganywa n'amategeko, bishoboka ko umuburanyi yasaba ko uru Rukiko rusuzuma niba itegeko ryavuyeho rinyuranyije n'Itegeko Nshinga.

[27] Urukiko rurebeye hamwe ibivugwa mu ngingo ya 72 n'ingingo ya 74 igika cya 1 n'icya 2 z'Itegeko N° 30/2018 ryavuzwe haruguru, rurasanga Umushingamategeko atarasobanuye mu buryo bweruye ibyo Urukiko rushingiraho rusuzuma iyakirwa ry'ikirego cy'itegeko rinyuranyije n'Itegeko Nshinga kibyukijwe n'umuburanyi mu rubanza, bikaba ariko byumvikana ko icyo kirego kigomba gusuzumwa mu buryo bumwe n'ubw'ibirego bisaba kwemeza ko Itegeko rinyuranyije n'Itegeko Nshinga buteganywa n'ingingo ya 72.

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[2] National Council of Provinces.

[3] *Speaker of the National Assembly and Another v Land Access Movement of South Africa and Others [2019] ZACC 10,* rwaciwe ku wa 19/03/2019, mu gika cya 8, "*The applicants challenged the constitutionality of the repealed Amendment Act on two grounds: first, that the NCOP and the provincial legislatures respectively breached section 72(1)(a) of the Constitution by failing to "facilitate public involvement" in the passing of the Bill that preceded the repealed Amendment Act"* maze mu gika cya 10, Urukiko Rushinzwe Itegeko Nshinga, rugira ruti […] *"It also declared the repealed Amendment Act to be invalid, thereby accepting the LAMOSA respondents'first argument..."* ruboneka kuri http://www.saflii.org/za/cases/ZACC/2019/10.html.

[4] (…) "*The aforesaid judgments leave no room for doubt that after enactment of the Repealing Act, 2018, the 2-12 Act did not survive and the High Court ought not to have considered the constitutional validity of the same. To that extent, the High Court committed an error in declaring a non-existing law as unconstitutional*." The State of Manipur & Ors Vs Surjakumar Okram & Ors, Civil Appeal Nos. 823 – 827 of 2022, 1 February 2022, https://indiankanoon.org/doc/118737687/

[28] Urukiko rurasanga rero bimwe mu bisabwa kugira ngo ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga cyakirwe, ari uko urega agomba kugaragaza itegeko anenga n'imigereka yaryo iyo ihari. Bikumvikanisha ko ikigamijwe muri bene ibi birego ari ukugira ngo mu gihe Urukiko rw'Ikirenga rusanze koko iryo tegeko ribangamiye uburenganzira bw'umuntu buteganywa n'Itegeko Nshinga, rivanweho.

[29] Ku birebana n'ivanwaho ry'itegeko rinyuranyije n'Itegeko Nshinga bishimangirwa no kuba mu gika cya 5 cy'ingingo ya 72 y'Itegeko N° 30/2018 ryavuzwe haruguru, Umushingamategeko yaragennye ko iyo itegeko ryemejwe ko rinyuranyije n'Itegeko Nshinga, Urukiko rw'Ikirenga ruhita rubimenyesha mu nyandiko inzego zibifitiye ububasha kugira ngo rikosorwe cyangwa risimbuzwe. Inzego zibifitiye ububasha ni Inteko Ishinga Amategeko na Guverinoma.

[30] Urukiko rurebye ibisabwa mu itangwa ry'ibirego bisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga n'imihango iteganyijwe nyuma yo gusanga ariko bimeze, rurasanga ari imihango ya ngombwa ku buryo mu gihe itubahirijwe byatuma icyemezo Urukiko rwaba rwafashe gita agaciro, kuko Urukiko rw'Ikirenga rutamenyesha Inteko Ishinga Amategeko na Guverinoma kugira ngo hakurweho itegeko n'ubundi ritakiriho cyangwa ngo hatangazwe mu Igazeti ya Leta urubanza rwemeza ko itegeko rivuyeho kandi n'ubundi ryaramaze gutangazwa ko ryavanyweho. Ibyo binahura n'ibyavuzwe na Me Hategeka Placide mu iburanisha, aho yireguye avuga ko bitaba ngombwa kumenyesha Inteko Ishinga Amategeko kuko iryo tegeko ryavuyeho.

[31] Urukiko rurasanga ingaruka ziva mu kuvanaho itegeko zaranasobanuwe mu rubanza "*The State of Manipur vs Surjakumar Okram*" rwaciwe n'Urukiko rw'Ikirenga rw'Ubuhinde, rwavuzwe haruguru, mu gika cyarwo cya 15 ku rupapuro rwa 6, aho rwemeje ko ……ingaruka zo kuvanaho itegeko ni ugusibwa burundu mu bitabo by'Inteko Ishinga Amategeko nk'aho ritigeze ritorwa kandi bigafatwa nk'aho ritigeze ribaho keretse irengayobora ku bikorwa byari byaratangiye, ibyamaze gushinjwa ndetse n'ibyamaze gukorwa igihe ryari itegeko rikiriho. Rusobanura kandi ko […] uwo ari umurongo wamaze kwemezwa mu mategeko ko igihe cyose itegeko rivanyweho, bigomba gufatwa nk'aho ritigeze ribaho. Ikigamijwe mu kurivanaho akaba aba ari ukurandura iryo tegeko keretse irengayobora ku mpamvu zimwe ziteganijwe. Kuvanaho akaba atari ikibazo kirebana n'imiterere (*form*) gusa ahubwo kikaba kinareba ibirimo (*substance*). Bityo rero, iyo itegeko rivanyweho, ingingo zaryo ziba zakuweho mu buryo bwose.[5]

[32] Urukiko, rushingiye ku bisobanuro byatanzwe mu bika bibanziriza iki, rurasanga nta gushidikanya ko itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rigomba kuba ari itegeko rikiriho, ni ukuvuga rigikurikizwa nk'uko abahagarariye Leta babiburanisha.

[33] Urukiko rurasanga ibivugwa na Me Hategeka Placide ko Fast Truck Interior and Hardware Ltd yaregeye Itegeko N° 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoresha n'ubwo ryavuyeho kuko Rwanda Revenue Authority yashingiye ku ngingo yaryo ya 64 ikayica umusoro ungana n'amafaranga 32.258.138, nta shingiro bifite kubera ko ibyemezo bifatwa mu bijyanye n'isora n'isoreshwa ari ibyemezo by'ubutegetsi, bishobora kuvanwaho binyuze mu nzira yo

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[5] *The State of Manipur vs Surjakumar Okram on 1 February, 2022* rwaciwe n'Urukiko rw'Ikirenga rw'Ubuhinde, mu gika cyarwo cya 15 ku rupapuro rwa 6, aho rugira ruti […] *"I take the effect of repealing a statute to be to obliterate it as completely from the records of Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law."* Rugakomeza rugira ruti […] "*It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed"* …rugasoza rugira ruti "*Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly..."* ruboneka kuri https://indiankanoon.org/doc/118737687/.

gutakambira Komiseri Mukuru nk'uko byateganywaga n'ingingo ya 30 y'iryo Tegeko, nabwo icyemezo afashe kitamunyura akaregera urukiko.

[34] Ibyo bikaba bigaragaza ko hateganyijwe inzira umusoreshwa ubangamiwe n'ingingo ya 64 y'Itegeko N° 25/2005 ryavuzwe haruguru yashoboraga kwiyambaza kugira ngo arenganurwe, kandi Fast Truck Interior and Hardware Ltd ikaba yarayiyambaje mu rwego rwo kugira ngo umusoro yaciwe ukurweho, bitandukanye no gutanga ikirego gisaba kwemeza ko itegeko ritakiriho rinyuranyije n'Itegeko Nshinga, kandi ntaho rikigaragara mu bitabo by'amategeko nk'uko byasobanuwe haruguru.

[35] Dushingiye ku bisobanuro byatanzwe haruguru, Urukiko rurasanga ikirego cyatanzwe na Fast Truck Interior and Hardware Ltd iregera kwemeza ko ingingo ya 64 y'Itegeko N° 25/2005 ryavuzwe haruguru rinyuranyije n'Itegeko Nshinga kitagomba kwakirwa kuko iryo tegeko ritakiriho.

III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko inzitizi yatanzwe na Leta y'u Rwanda ifite ishingiro.

[37] Rwemeje ko ikirego cya Fast Truck Interior and Hardware Ltd gisaba kwemeza ko ingingo ya 64 y'Itegeko n° 25/2005 ryo ku wa 04/12/2005 ryagenaga imitunganyirize y'isoresha, inyuranye n'ingingo ya 29 n'iya 61 z'Itegeko Nshinga, kitakiriwe ngo gisuzumwe.

[38] Rwemeje ko hakomeza iburanisha ry'urubanza RCOMA 00443/2021/HCC mu Rukiko Rukuru rw'Ubucuruzi.