GIHANA v RWABUHIHI N’UNDI

[Rwanda URUKIKO RUKURU - RS/INJUST/RC 00003/2023/HC/KIG (Rugema, P.J., Byakatonda, Maneza, J.) 12 Mata 2024]

Amategeko agenga imiburanishirize y’imanza – Gusubirishamo urubanza ingingo nshya – Urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z’akarengane - Urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z’akarengane ruba ari urwanyuma ndetse ntirushobora gusubirishwamo ingingo nshya kuko gusubirishamo urubanza ku mpamvu z’akarengane ari inzira idasanzwe idashobora gufungura izindi nzira z’ubujurire kuko ziba zararangiye.

Incamake y’ikibazo: Uru rubanza rwatangiriye mu Rukiko rw’Ibanze rwa Nyamata aho Mukandamage yatanze ikirego arega uwitwa Rwabuhihi asaba urukiko gutesha agaciro icyemezo cy’ubutaka yabaruje kuri ‘’Succession’’ Ntagozera ihagarariwe na Rwabuhihi. Urega yavugaga ko Rwabuhihi ari musaza we wo kwa se wabo witwa Ntagozera kuko yavukanaga na se witwa Rusake bombi bakaba babyarwa na Ngombababiri iyo sambu rero ikaba ari iyasizwe na Ngombababiri bityo nawe akaba ayifiteho uburenganzira. Urukiko rwemeje ko icyemezo cy’iyandikisha ry’ubutaka bubaruye kuri ‘’Succession’’ Ntagozera giteshejwe agaciro ariko Rwabuhihi ntiyakishimira akijuririra mu Rukiko Rwisumbuye rwa Gasabo avuga ko isambu iburanwa atari iy’umuryango kuko yayisigiwe na se. Urukiko rwasanze ubujurire bwe bufite ishingiro maze rwemeza ko isambu iburanwa ari iya Rwabuhihi.

Mukandamage yasabye ko urubanza rwe rusubirwamo ku mpamvu z’akarengane maze arabyemererwa, rwongera kuburanishwa n’Urukiko Rukuru, rwemeza ko ikirego cye gifite ishingiro, rutegeka ko icyemezo cy’iyandikisha ry’ubukode bw’ubutaka kibaruye ku mazina ya “Succession” Ntagozera ihagarariwe na Rwabuhihi, giteshejwe agaciro kandi ko Mukandamage agomba kwandikwaho igice cy’ubutaka Rwabuhihi yari yaribarujeho.

Uwitwa Gihana yaje gutambamira imikirize y’urwo rubanza ariko Mukandamage atanga inzitizi yo kutakira ikirego avuga ko uwagitanze adafite inyungu n'ububasha kuko urubanza atambamira rwaburanyweho rurapfundirwa burundu. Gihana avuga ko iyo nzitizi itahabwa ishingiro kuko umutungo waburanwe na we awufiteho uruhare kuko ukomoka kuri se ubabyara witwa Ngombababiri. Rwabuhihi we avuga ko mu iburana birengagije ko Gihana na we afite uburenganzira kuri iyo sambu bityo ibyo avuga bikaba byahabwa agaciro.

Inshamake y’icyemezo: Urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z’akarengane ruba ari urwanyuma ndetse ntirushobora gusubirishwamo ingingo nshya kuko gusubirishamo urubanza ku mpamvu z’akarengane ari inzira idasanzwe idashobora gufungura izindi nzira z’ubujurire kuko ziba zararangiye.

Ikirego cyo gutambamira imikirize y’urubanza rwaciwe ku mpamvu z’akarengane, nticyakiriwe.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 165.

Imanza zifashishijwe:
RCOMAA 00001/2019/SC, Ntegeye Bernard v BNR NA ECOBANK RWANDA LTD, rwaciwe n'Urukiko rw'Ikirenga ku wa 24/01/2020;
RSA/RECT/RC 00002/2023/CA, Torero Boniface v Twagiramungu Vincent, Rwaciwe n'Urukiko rw'Ubujurire ku wa 19/10/2023.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka k'urubanza Mukandamage Gaudence yarezemo Rwabuhihi John asaba urukiko gutesha agaciro icyemezo cy'iyandikisha ry'ubukode bw'ubutaka kibaruye kuri numero 2367 ibaruye kuri "succession" Ntagozera ihagarariwe na Rwabuhihi John, avuga ko Rwabuhihi ari musaza we kwa se wabo Ntagozera kuko Ntagozera avukana na se witwaga Rusake bose babyarwa na Ngombababiri w'itabye Imana mbere ya 1994 ariko ngo agasiga buri mwana amuhaye umunani; Mukandamage Gaudence avuga ko ubu akorera mumunani wa se Rusake kuva mu 2004 kugeza uyu munsi, mu gihe cy'ibarura ry'ubutaka bumvikana na Rwabuhihi John ko babaruriza hamwe kugirango bajye basora amafaranga make ariko ko bazakomeza gukoreramo uko bisanzwe, nyuma Rwabuhihi John akabaheza mu isambu avuga ko ngo ubutaka bwa Rusake yari yarabugurishije kera yirengagije ko ubwo butaka Mukandamage Gaudence abukoreramo ndetse yabusinzwemo na se Rusake ubwo yitabaga Imana muri 2004. Ikirego cya Mukandamage Gaudence cyatanzwe mu rukiko rw'ibanze rwa NYAMATA cyandikwa ku nimero RC 0032/16/TB/NMTA, urubanza rwaburanishijwe Rwabuhihi John adahari.Urubanza RC 0032/16/TB/NMTA rwakijije ko ikirego cya Mukandamage Gaudence gifite shingiro, rwemeza ko icyangombwa cy'ubutaka gifite numero 2367 kibaruye kuri "succession" Ntagozera ihagarariwe na Rwabuhihi John giteshejwe agaciro ku mpamvu zasobanuwe muri urwo rubanza, rwemeje ko nta ndishyi zihabwa Mukandamage Gaudence muri uru rubanza ku mpamvu zavuzwe muri urwo rubanza, rutegeka ko Rwabuhihi John atanga amagarama y'urubanza angana n'ibihumbi 25.000frw, atayanga urubanza rwabaye ntakuka akavanwa mubye ku ngufu za Leta.

[2] Rwabuhihi John yajuririye iyo mikirize y'urubanza RC 0032/16/TB/NMTA mu rukiko rwisumbuye rwa Gasabo byandikwa ku nimero RCA 00198/2016/TGI/GSBO. Mu rubanza RCA 00198/2016/TGI/GSBO Rwabuhihi John yavugaga ko Mukandamage Gaudence yabeshye urukiko avuga ko isambu yaburanye ari iy'umuryango kandi ko nawe ayifiteho uruhare nyamara ngo ari iya Rwabuhihi John yasigiwe na se, ngo ibyo akaba yarabigezeho amaze gukora uburiganya bwo kubeshya mu ihamagara yemeza ko Rwabuhihi John yabuze, kugira ngo atitaba akamuburanya ngo kubera ko yari azi neza ko iyo aza kuba ahari atari gutsinda urubanza. Mukandamage Gaudence we yaburanye avuga ko ubutaka Rwabuhihi amuburanya ari ubwo yasigiwe na se Rusake wapfuye mu mwaka wa 1954, kandi ko kuva icyo gihe kugeza ubu yakomeje kubukoreramo mu bwisanzure ku buryo ngo hari abantu benshi bashobora kubihamya. Urukiko rwisumbuye rwa Gasabo rwakijije urubanza RCA 00198/2016/TGI/GSBO ko ubujurire bwa Rwabuhihi John bufite ishingiro, rwemeza ko urubanza RC 0032/16/TB/NMTA ruvanyweho,

ko isambu iburanwa muri uru rubanza ari iya Rwabuhihi John, kandi ko ibyemezo biyimuhesha bigumanye agaciro kabyo, rutegeka Mukandamage Gaudence kwishyura Rwabuhihi John indishyi z'akababaro zihwanye n'amafaranga 500.000, hiyongereyeho amafaranga 500.000 y'igihembo cya avoka, akanamusubiza amafaranga 50.000 yishyuye igarama, atayishyura mu minsi cumi n'itanu uru rubanza rubaye ntakuka, aya mafaranga agakurwa bye ku ngufu za Leta.

[3] Nyuma y'uko urubanza RCA 00198/2016/TGI/GSBO ruciwe Mukandamage Gaudence yasabye ko rusubirwamo ku mpamvu z'akarengane, amaze kubyemererwa urubanza rwoherezwa mu rukiko rukuru ku cyicaro cyarwo i Kigali ruhabwa nimero RS/INJUST/RC 00006/2020/HC/KIG.

[4] Kuwa 06/04/2023 urukiko rukuru uri i Kigali rwaciye urubanza RS/INJUST/RC 00006/2020/HC/KIG rwemeza ko ikirego cya Mukandamage Gaudence cyo gusubirishamo urubanza ku mpamvu z' karengane gifite ishingiro, ko urubanza RCA 00198/2016/TGI/GSBO rwasubirishijwemo kumpamvu z'akarengane ruhindutse, rutegeka ko icyemezo cy'iyandikisha ry'ubukode bw'ubutaka kibaruye kuri nimero 2367 ku mazina ya "succession" Ntagozera ihagarariwe na Rwabuhihi Jean, giteshejwe agaciro; Mukandamage Gaudence akaba agomba kwandikwaho igice cy'ubutaka Rwabuhihi Jean yari yaribarujeho, rutegeka Rwabuhihi Jean guha Mukandamage Gaudence, indishyi z'akababaro z'amafaranga 500.000Frw, amafaranga 200.000Frw y'ikurikiranarubanza n'amafaranga 500.000 y'igihembo cy'avoka.

[5] Kuwa 18/05/2023 Gihana Ndereya yatambamiye imikirize y'urubanza RS/INJUST/RC 00006/2020/HC/KIG byandikwa mu rukiko rukuru kuri nimero RS/INJUST/RC 00003/2023/HC/KIG.

[6] Mu rukiko rukuru ari umunsi w'iburanisha wo kuwa 01/03/2024 hasuzumwe inzitizi ijyanye n'iyakirwa ry'ikirego gitambamira imikirize y'urubanza rwakarengane RS/INJUST/RC 00006/2020/HC/KIG, Gihana Ndereya ahagarariwe na Me Munyamasoko Jovith, Rwabuhihi John yiburanira, Mukandamage Gaudence yunganiwe na Me Uwizeyimana Moustafa.

[7] Me Uwizeyimana Moustafa wunganira Mukandamage Gaudence yatanze inzitizi isaba kutakira ikirego cya Gihana Ndereya kuko uwagitanze adafite inyungu n'ububasha, ko urubanza atambamira rwaburanyweho rurapfundirwa burundu habaho gukosora ibibanza byanditswe kuri Succession Ntagozera ihagarariwe na Rwabuhihi John.

[8] Gihana Ndereya ahagarariwe na Me Munyamasoko Jovith avuga ko iyo nzitizi ari nta shingiro yahabwa ngo kuko inkomoko y'Umutungo w'aburanywe hagati ya Rwabuhihi John na Mukandamage Gaudence ukomoka kuri se Ngombababiri ngo hakaba harirengagijwe ko Gihana Ndereya afite inyungu kuri uwo mutungo wasizwe na se.

[9] Rwabuhihi John we yavugaga ko bagabanye bakirengagiza Gihana Ndereya ko kandi umugabane wahawe Gihana Ndereya ari Mukandamage Gaudence wahagurishije.

[10] Urukiko rukuru rwasuzumye inzitizi yerekeranye n'iyakirwa ry'iki kirego gitambamira imikirize y'urubanza RS/INJUST/RC 00006/2020/HC/KIG rwaciwe kubw'akarengane.

III. ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA

Gusuzuma ishingiro ry'inzitizi yerekeranye n'iyakirwa ry'iki kirego gitambamira imikirize y'urubanza RS/INJUST/RC 00006/2020/HC/KIG rwaciwe kubw'akarengane.

[11] Mu rukiko rukuru ari umunsi w'iburanisha wo ku wa 01/03/2024 hasuzumwe inzitizi yatanzwe na Me Uwizeyimana Moustafa wunganira Mukandamage Gaudence isaba kutakira ikirego cya Gihana Ndereya kuko uwagitanze adafite inyungu n'ububasha, ko urubanza atambamira rwaburanyweho rurapfundirwa habaho gukosora ibibanza byanditswe kuri Succession Ntagozera ihagarariwe na Rwabuhihi John.

[12] Gihana Ndereya ahagarariwe na Me Munyamasoko Jovith avuga ko iyo nzitizi ari nta shingiro yahabwa ngo kuko muri "attachment" ya 7 hari inyandiko yo kuwa 26/10/2009 yavugaga izungura ry'abuzukuru ba Ngombababiri ngo akaba ari se wa Gihana Ndereya, ko iyo nyandiko bigaragara ko inkomoko y'Umutungo w'aburanywe hagati ya Rwabuhihi John na Mukandamage Gaudence ukomoka kuri se Ngombababiri ngo hakaba harirengagijwe ko Gihana Ndereya afite inyungu kuri uwo mutungo wasizwe na se.

[13] Gihana Ndereya ahagarariwe na Me Munyamasoko Jovith mu mwanzuro we yavugaga ko ikirego cye aho atambamirwa urubanza RS/INJUST/RC 00006/2020/HC/KIG rwaciwe ku rwego rwa nyuma n'Urukiko Rukuru ko cyakwakirwa ngo kuko urukiko rukuru arirwo rufite ububasha bwo kuruburanisha kuko gutambamira urubanza bikorerwa mu rukiko rwaruciye ko biteganywa n'ingingo ya 165 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[14] Me Uwizeyimana Moustafa wunganira Mukandamage Gaudence avuga ko inyandiko yo kuwa 26/10/2009 atariyo Rusake se wa Mukandamage Gaudence akomoraho ubutaka bwaburanywe mu rubanza RS/INJUST/RC 00003/2023/HC/KIG ko ndetse atari nayo Rwabuhihi John akomoraho ubutaka bwaburanywe mu rubanza RS/INJUST/RC 00003/2023/HC/KIG, ko iriya inyandiko yo kuwa 26/10/2009 ari aho bagabaniye ingarigari ya Ngombababiri; yanzuye avuga ko ubutaka Gihana Ndereya akomora kuri se Ngombababiri ko yabugurishije uwitwa Rurinda.

[15] Rwabuhihi John we yavugaga ko bagabanye bakirengagiza Gihana Ndereya ko kandi aha Gihana Ndereya ari Mukandamage Gaudence wahagurishije.

UKO URUKIKO RUBIBONA

[16] Urubanza N° RCOMAA 00001/2019/SC rwaciwe ku wa 24/01/2020 hagati ya Ntegeye Bernard v BNR na ECOBANK RWANDA LTD, mu gika cyarwo cya 25 urukiko rw'ikirenga rwemeje ko urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane ruba ari urwanyuma ndetse ntirushobora gusubirishwamo ingingo nshya kuko gusubirishamo urubanza ku mpamvu z'akarengane ari inzira idasanzwe idashobora gufungura izindi nzira z'ubujurire kuko ziba zararangiye.

[17] Urubanza N° RSA/RECT/RC 00002/2023/CA, rwaciwe ku wa 19/10/2023, hagati ya Torero Boniface v Twagiramungu Vincent rwemeje ko inzira y'ubujurire busanzwe cyangwa ubudasanzwe idashoboka ku rubanza rwasubiwemo ku mpamvu z'akarengane, rubishingira ku rubanza N° RCOMAA 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/01/2020

ruvugwa haruguru maze rwemeza ko urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, rudashobora gusubirishwamo ingingo nshya, bityo ko ikirego cyo gusubirishamo urubanza ingingo nshya, cyatanzwe na Ntegeye Bernard, kidashobora kwakirwa ngo gisuzumwe.

[18] Urukiko rukuru rushingiye ku manza zivugwa haruguru aho zivuga ko inzira y'ubujurire busanzwe cyangwa budasanzwe idashoboka ku rubanza rwasubiwemo ku mpamvu z'akarengane, ikirego cya Gihana Ndereya gitamba (tierce opposition) akaba ari ikirego cy'ubujurire budasanzwe bwakorewe urubanza RS/INJUST/RC 00006/2020/HC/KIG rwaciwe kubw'akarengane rusanga ko aribyo bituma uru urukiko rukuru rugomba kubishingirwaho rukemeza ko ikirego cya Gihana Ndereya ko kidashobora kwakirwa ngo gisuzumwe kuko ariwo murongo yatanzwe mu manza RCOMAA 00001/2019/SC na RSA/RECT/RC 00002/2023/CA.

[19] Rusanga ko ibivugwa haruguru mu manza RCOMAA 00001/2019/SC na RSA/RECT/RC 00002/2023/CA bigaragaza kuburyo budashidikanywa ko inzira yo gutambamira urubanza iteganywa n'ingingo ya 165 y'itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[1] ko itagomba kwakirwa ngo isuzumwe n'inkiko iyo ikorewe ku manza zaciwe k'ubw'akarengane.

III. ICYEMEZO CY'URUKIKO RUKURU

[20] Rwemeje ko ikirego cya Gihana Ndereya gitambamira imikirize y'urubanza RS/INJUST/RC 00006/2020/HC/KIG rwaciwe kubw'akarengane ko kitakiriwe ngo gisuzumwe.

[21] Ruvuze ko amagarama y'urubanza yatanzwe na Gihana Ndereya ahwanye n'ibyakozwe muri uru rubanza.

[1] Ingingo ya 165 y'itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko:" Ikirego cy'iremezo kigamije gutambamira urubanza gitangwa mu rukiko rwaciye urwo rubanza rusabirwa gusubirwamo. Gutambamira urubanza rwaciwe ntibihagarika irangiza ryarwo, keretse iyo rihagaritswe n'urukiko rwaregewe, bisabwe n'umuburanyi"