NZABANDORA v KALISA

[Rwanda URUKIKO RUKURU - RCA 00147/2023/HC/KIG (Gaju, P.J.) 05 Nyakanga 2024]

Amategeko agenga imiburanishirize y'imanza – Imitangire y'ibirego – Uburyo bwo kumenya icyaregewe - Mu kumenya icyaregewe, ntabwo hashingirwa gusa ku buryo cyanditse, ahubwo hagomba kurebwa ibisabwa na buri muburanyi.

Incamake y'ikibazo: Nzabandora yaguze ikibanza na Kalisa ariko ntibakora ihererekanya kuko Kalisa yavugaga ko atanze kumukorera ihererekanya ahubwo ko yabyanze kubera ko yashakaga gukorerwa ihererekanya aho yaguze n'aho ataguze. Nzabandora yatanze ikirego mu Rukiko Rwisumbuye rwa Gicumbi asaba ko yakorerwa ihererekanya (mutation) ku kibanza yaguze Kalisa atanga inzitizi yo kutakira ikirego ngo kuko ikibazo bafitanye ari icy'imbibi. Urukiko rwemeje ko ihererekanya risabwa ritakorwa kuko Nzabandora yakoresheje igishushanyo cy'icyo kibanza wenyine atari kumwe n'uwamugurishije.

Urega yatanze ubujurire mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rwemeje ko ikiregerwa ari imbibe kandi we yarareze asaba gukorerwa ihererekanya mutungo. Ubujurire bwarakiriwe maze urukiko rusuzuma ikibazo cyo kumenya niba ikirego Nzabandora yatanze kitakwakirwa kuko kitari mu bubasha bw'uru rukiko.

Nzabandora asobanura ko ataregera imbibe ahubwo ko aregera gukorerwa ihererekanya mutungo ry'ikibanza yaguze ko kuba urukiko rwaremeje ko ikiregerwa ari imbibe rushingiye kuri raporo y'inzego z'ibanze bitahabwa agaciro bityo agasanga Urukiko Rwisumbuye rwaraciye urubanza kukitararegewe. Kalisa avuga ko nubwo urega yatanze ikirego avuga ko asaba gukorerwa ihererekanya mutungo, mu gusuzuma ikirego byaje kugaragara ko arati ihererekanya mutungo riburanwa ko ahubwo haburanwa imbibe z'ikibanza asabira gukorerwa ihererekanya bityo ikirego cye kikaba kitaragombaga kwakirwa.

Incamake y'icyemezo: Mu kumenya icyaregewe, ntabwo hashingirwa gusa ku buryo cyanditse, ahubwo hagomba kurebwa ibisabwa na buri muburanyi.

Urubanza RC 00026/2022/TGI/GIC ruvanyweho kuko rwaciwe n'urukiko rutabifitiye ububasha.

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 6;

Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 27.

Imanza zifashishijwe:

RCAA 0022/16/CS, Mbarushimana na Nkundabanyanga rwaciwe n'Urukiko rw'Ikirenga ku wa 03/07/2018.

Urubanza

I. MITERERE Y'URUBANZA

[1] Ku wa 07/12/2017, Nzabandora Valeur yaguze ikibanza giherereye mu Kagali ka Bubangu, Umurenge wa Murambi, Akarere ka Rulindo, Intara y'Amajyaruguru, akigura na Kalisa Tharcisse; uyu ntiyamukorera ihererekanya; Nzabandora Valeur amurega mu rukiko rwisumbuye asaba ko yakorerwa ihererekanya ku mutungo yaguze; Kalisa Tharcisse avuga ko atanze kumukorera ihererekanya aho baguze ahubwo ko aba ashaka ko akorerwa ihererekanya aho yaguze naho ataguze, Kalisa Tharcisse kandi yatanze n'inzitizi mu rukiko rwisumbuye asaba ko ikirego kitakirwa kuko Nzabandora Valeur atagombaga kuregera mutation ahubwo ikibazo bafite ari icy'imbibi.

[2] Urukiko Rwisumbuye rwa Gicumbi rwasuzumye ibijyanye na mutation ndetse n'indishyi; ruvuga ko Nzabandora Valeur nta mutation yahabwa kuko ku cyangombwa cyubutaka afite bagendeye ku bipimo yari yapimishije wenyine, hategekwa ko haza undi mu technicien wo gupima bose bahari, Nzabandora Valeur akanga gutanga amasezerano y'ubugure n'inyandiko yapimishirijeho mbere; bityo ko ibyo asaba byo gukorerwa mutation atabihawe, ndetse ategekwa no gutanga indishyi.

[3] Nzabandora Valeur ntiyishimiye icyo cyemezo, akijuririra muri uru rukiko; mbere y'uko urubanza ruburanishwa, Me Rwagasana wunganira Kalisa Tharcisse avuga ko ikirego cya Nzabandora Valeur kitagombaga kwakirwa mu rukiko rwisumbuye, kuko uyu yareze Kalisa Tharcisse wenyine kandi afite umugore basangiye umutungo; ikindi ni uko ikiburanwa kitaba mutation kuko ikibazo ababuranyi bagifite ku mbibi, Nzabandora Valeur akaba mbere yo kubizana mu rukiko yaragombaga kubigeza kwa Mayor nkuko ingingo ya 9 y'iteka rya minisitiri numero 0004/MO/2022 ribivuga.

[4] Nzabandora Valeur yavuze ko ataregeye imbibi ahubwo yaregeye mutation, kandi umugore wa Kalisa ngo yasinye ku masezerano y'ubugure ku buryo kurega Kalisa wenyine ntacyo byishe kuko basezeranye ivangamutungo rusange. Urukiko rwavuze ko izo nzitizi zizasuzumurwa hamwe n'urubanza mu mizi.

[5] Nzabandora Valeur yavuze ko impamvu yatumye ajurira ari uko urukiko rwisumbuye rwashingiye kuri raporo y'inzego z'ubuyobozi bw'ibanze kandi iyo raporo atayemera, ikindi ni uko urukiko rwisumbuye rwavuze ko icyo aregera ari imbibe bityo ko ikirego kitakiriwe, akaba rero yaraciye urubanza kukitararegewe kuko we yareze Kalisa Tharcisse asaba ko amukorera ihererekanya ku mutungo baguze.

[6] Kalisa Tharcisse avuga ko atanze gukorera Nzabandora Valeur ihererekanya, ahubwo impamvu atayimukoreye ari uko ashaka ko ayikora naho bataguze.

[7] Urubanza rwaburanishijwe Nzabandora Valeur yitabye, yunganiwe Rwagasana naho Kalisa Tharcisse nawe yitabye, yunganiwe na Me Sebintu Nkinzingabo Jonathan.

[8] Igisuzumwa muri uru rubanza ni ukumenya:

- ✓ Inzitizi zatanzwe n'uwajuriye zifite ishingiro;

- ✓ Niba Nzabandora Valeur yakwandikwa ku mutungo UPI: 4/01/11/01/6830;

- ✓ Niba hari indishyi zatangwa muri uru rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

• Ku bijyanye no kumenya niba kuba Nzabandora Valeur atarareze umugore wa Kalisa Valeur byatuma ikirego kitakirwa.

[9] Me Rwagasana Innocent wunganira Kalisa Tharcisse yavuze ko ikirego cya Nzabandora Valeur kitakwakirwa kuko yareze Kalisa Tharcisse wenyine kandi umutungo awufatanyije n'umugore we.

[10] Me Sebintu Nkinzingabo Jonathan wunganira Nzabandora Valeur avuga ko ibyo uwunganira urega avuga nta shingiro byahabwa kuko kuba yarareze Kalisa Tharcice wenyine ni uko umugore we yasinye ku masezerano y'ubugure kandi bakaba bafatanyije umutungo.

UKO URUKIKO RUBIBONA

[11] Urukiko rurasanga ingingo ya 3 ndetse n'iya 83 z'itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, arizo zivuga igihe ikirego kitagomba kwakirwa ; kuba Nzabandora Valeur yarareze Kalisa Tharcisse rero akaba abifitemo inyungu kuko avuga ko yamugurishije akanga kumukorera mutation, kandi nkuko bigaragara mu masezerano y'ubugure akaba ariwe wamugurishije koko ; kuba atareze umugore we bikaba btatuma ikirego kitakirwa kuko yareze uwo yumva bafitanye ikibazo ; uregwa rero akaba atariwe wagena uwo agomba kurega mu gihe urega afite ububasha, ndetse n'inyungu zo kurega uwo yumva bafitanye amakimbirane, kandi akagaragaza nayo makimbirane bafitanye yuko yamugurishije ntamukorere ihererekanya ; bityo iyi ngingo yatanzwe na Nzabandora Valeur ikaba itatuma ikirego kitakirwa.

• Ku bijyanye no kumenya niba ikirego Nzabandora Valeur yatanze kitakwakirwa kuko kitari mu bubasha bw'uru rukiko.

[12] Me Rwagasana Innocent wunganira Kalisa Tharcisse avuga ko Nzabandora Valeur atagombaga kuregera mutation kuko ikibazo bafite ari icy'imbibi atagombaga kuzana imbere y'urukiko atabanje kukigeza imbere ya Mayor nkuko ingingo ya 9 y'iteka rya minisitiri numero 0004/MO/2022 ribivuga.

[13] Nzabandora Valeur yunganiwe na Me Sebintu Nkinzingabo Jonathan avuga ko ataregera imbibe ahubwo asaba gukorerwa ihererekanya ku mutungo yaguze ; asobanura ko Urukiko Rwisumbuye rwashingiye ku kuba ababuranyi barahawe umwanya wo kujya kumvikana, bagashaka umutekinisiye upima niba ubuso bugaragara ku masezerano y'ubugure yo kuwa 7/12/2017, aribwo bugaragara ku bipimo Nzabandora Valeur yapimishije wenyine atari kumwe na Kalisa Tharcisse, na raporo yakozwe n'Ubuyobozi bw'Umudugudu wa Rebero, ivuga ko ushinzwe

gupima ubutaka yageze aho ubutaka buri, Nzabandora Valeur yanga gutanga amasezerano y'ubugure n'inyandiko yapimishirijeho ubutaka bwe atari kumwe na Kalisa Tharcisse, gupima birananirana ; ko hakurikijwe imiburanire y'Ababuranyi bombi, ndetse na raporo y'Umudugudu wa Rebero yo kuwa 17/11/2022, ikibazo ababuranyi bafite atari icy'ihererekanya k'ubutaka (mutation) ahubwo ari icy'imbibi".

[14] Nzabandora Valeur yunganiwe na Me Sebintu Nkinzingabo Jonathan akomeza avuga ko akurikije ibyo urukiko rwisumbuye rwasobanuye, ngo rwaciye urubanza ku kitararegewe kandi rubibujijwe nkuko ingingo ya 10 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibiteganya ; kuko nta kibazo cy'imbibi yigeze aregera, nta nubwo cyagiweho impaka, kuko mu masezerano yakozwe 7/12/2017 impande zombi ziyemeranywaho, kandi akaba agaragaramo ingano y'icyo gice cy'ubutaka cyagurishijwe; icyabaye ngo ni uko kuri ubwo butaka bwagurishijwe Leta yafasheho igice gito kikagirwa umuhanda, abagurishije aribo bahawe ingurane yaho kuko umutungo warukibanditseho; akaba asaba urukiko rukuru gutegeka ko habaho ihererekanya kuri ubwo butaka kuko urukiko rwisumbuye rwavuze ko nta bubasha rufite kandi arirwo rwari rufite ububasha nk'uko ingingo ya 31 y'ItegekoN°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ibivuga.

[15] Kalisa Tharcisse yunganiwe na Me Rwagasana Innocent avuga ko nubwo Nzabandora Valeur avuga ko atari ikibazo cy'imbibi yaregeye ariko ngo yirengagiza ko mu gusuzuma ikirego, byagaragaye ko ikibazo impande zombi zifitanye gishingiye ku mbibi z'ubutaka busabirwa ihererekanya; Urukiko Rwisumbuye ngo rwasabye impande zombi kujya gusubiramo ipimwa ry'ubutaka bose bahari, Nzabandora Valeur ashyiramo amananiza igihe ubuyobozi n'umutechnicien wari warabupimye mbere bari baje muri icyo gikorwa nk'uko bigaragara muri Raporo y'inzego z'ubuyobozi yo kuwa 17/11/2022; arinayo mpamvu ikirego cye kitahawe ishingiro kuko ikibazo cy'imbibi impande zombi zifitanye kigihari, kandi ibibazo by'imbibi biza mu rukiko byabanje mu zindi nzego nko mu buyobozi bw'akarere cyangwa umujyi wa Kigali.

UKO URUKIKO RUBIBONA

[16] Urukiko rurasanga, nkuko bigaragara mu gika cya 9 cy'urubanza rwajuririwe, urukiko rwisumbuye rwaravuze ko ikibazo ababuranyi bafitanye atari mutation ahubwo ari icyi mbibi ; mu gika cya 15 ruvuga ko ikirego kitakiriwe, mu gika cya 17 ruvuga ko ikirego nta shingiro gifite. Ibi bisobanuye ko ari nkaho urukiko rwafashe ibyemezo bibiri bitandukanye (kutakira ikirego, no kwakira ikirego ariko rugasanga nta shingiro gifite). Kutakira ikirego byagaragaye mu isesengura ry'ibibazo bigize urubanza, kandi ibyasesenguwe akaba ari nabyo biba bigomba kugaragara mu cyemezo cy'urukiko, kuko icyemezo kiba kigizwe n'umwanzuro w'ibyasesenguwe. Bisobanuye rero ko urukiko rwisumbuye mu cyemezo cyarwo rutagombaga kwakira ikirego kandi rwasobanuye hejuru ko kitakiriwe kuko hataburanwa ihererekanya ahubwo haburanwa imbibi.

[17] Uru rukiko rurasanga Nzabandora Valeur avuga ko ataburana imbibi ahubwo aburana ihererekanya ku mutungo yaguze; uregwa akavuga ko atanze kumukorera ihererekanya ahubwo ko ikibazo ari uko ashaka kuyikorerwa naho ataguze.

[18] Urukiko rurasanga, mu kureba ikiburanwa; haricyo urukiko rwikirenga rwabivuzeho mu rubanza RCAA 00022/2016/SC -RCAA 0022/16/CS rwaciwe n'urukiko rwikirenga kuwa 03/07/2018, haburana Mbarushimana Jean Pierre na Nkundabanyanga Eugénie, ikiburanwa ari « gukuraho amasezerano y‟‟ubukode burambye nº 1020/KIC/GAT yahawe utari nyiri umutungo » ; Mbarushimana Jean Pierre yatanze inzitizi avuga ko urukiko rwisumbuye n'urukiko rukuru zaciye urubanza zitabifitiye ububasha kuko ikiburanwa ari isambu yagenewe ubuhinzi yagombaga kuburanishwa n'urukiko rw'ibanze. Nkundabanyanga Eugenie we avuga ko hataburanwe isambu ahubwo haregewe gukuraho amasezerano y‟‟ubukode burambye yahawe utari nyiri umutungo.

[19] Urukiko rwikirenga rwasobanuye ko n'ubwo inyandiko itanga ikirego mu Rukiko Rwisumbuye igaragaza ko haregewe gutesha agaciro amasezerano y'ubukode burambye yahawe Mbarushimana Jean Pierre utari nyiri umutungo, icyari kigamijwe ari ugusaba Urukiko kwemeza ko uwo mutungo ari uwa Nkundabanyanga Eugénie nk‟‟uko bigaragara mu byo yasabye urukiko, ndetse bikaba bigaragara ko mu mikirize y‟‟urubanza rwaciwe n'Urukiko Rwisumbuye kimwe n‟‟Urukiko Rukuru, zashingiye ku bimenyetso bigaragaza ko isambu Mbarushimana Jean Pierre yaherewe amasezerano y'ubukode burambye ari iya Nkundabanyanga Eugénie; rusobanura ko mu kumenya icyaregewe, hatashingirwa gusa ku buryo cyanditse, ahubwo hagomba kurebwa ibisabwa na buri buburanyi nk‟‟uko ingingo ya 6 y‟‟Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y‟‟imanza z‟‟imbonezamubano, iz‟‟ubucuruzi, iz‟‟umurimo n‟‟iz‟‟ubutegetsi, ibivuga ko ikiburanwa kigaragazwa n‟‟inyandiko itanga ikirego n'imyanzuro yo kwiregura ; bisobanuye ko icyo Nkundabanyanga Eugénie yari agamije arega, ari uko hemezwa ko isambu ari iye, ni ukuvuga kwemeza uburenganzira ayifiteho kuko n‟‟ubwo avuga ko ari we uyitunze, ubwo burenganzira atabufite mu gihe nta cya ngombwa cyayo afite, bikaba kandi ari nabyo byumvikana kuko nyuma yo kubona ubwo burenganzira, ari bwo yasaba kwandikwaho iyo sambu.

[20] Urukiko rwikirenga kandi rwemeje ko ikiregerwa ari isambu, kandi ko yagombaga kuregerwa mu rukiko rwibanze nkuko biteganywa n'ingingo ya 67 y‟‟Itegeko Ngenga nº 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n‟‟ububasha bw‟‟inkiko ryakurikizwaga ubwo cyatangwaga ; runashingira ku ngingo ya 158, igika cya mbere, y‟‟Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y‟‟imanza z‟‟imbonezamubano, iz‟‟ubucuruzi, iz‟‟umurimo n‟‟iz‟‟ubutegetsi rwemeza ko urubanza rwaciwe n‟‟Urukiko Rwisumbuye rwa Nyarugenge kimwe n‟‟urwarushingiyeho mu bujurire rwaciwe n‟‟Urukiko Rukuru, zigomba kuvaho kuko zaciwe n'inkiko zitabifitiye ububasha.

[21] Urukiko rurasanga ku bijyanye n'uru rubanza rero, narwo hatarebwa inyito y'ikiburanwa gusa « mutation », ahubwo harebwa umwanzuro wose waba uw'urega ndetse n'uwiregura; rurasanga nubwo Nzabandora Valeur avuga ko ataregeye imbibi ahubwo yaregeye ihererekanya, ariko Kalisa Tharcice avuga ko atanze kumukorera ihererekanya ahubwo icyo yanze ari uko ashaka ko amukorera ihererekanya naho atamugurishije, kandi Nzabandora Valeur nawe ntiyemera gukorerwa ihererekanya aho Kalisa avuga yamugurishije, ndetse Kalisa yifuza ko bapima bundi bushya kuko Nzabandora Valeur yapimishije adahari, mu iburanisha Nzabandora Valeur akavuga ko ibipimo biri ku masezerano hakoreshejwe intambwe hatakoreshejwe metero ariyo mpamvu bitandukanye n'ibiri ku cyangombwa cy'umutungo; ibi byose bigaragaza ko mu byukuri ikiburanwa ari nacyo kigize impaka atari ihererekanya kuko ryo baryemeranyaho ko rigomba kubaho koko, ahubwo ikigize impaka ni imbibi cyangwa ingano y'icyaguzwe; Nzabandora Valeur rero akaba atarega asaba ihererekanya, ibyo bibazo bitarakemuka, ahubwo akaba aribyo yabanza kuregera, byamara gukemuka akabona gusaba ihererekanya.

[22] Urukiko rurasanga rero, nubwo urukiko rwisumbuye rwari rwavuze ko ikirego kitakiriwe (muri motivation), ariko mu cyemezo rwafashe rwavuze ko ikirego nta shingiro gifite, bisobanuye ko rwaciye urubanza ku kirego kitagombaga kwakirwa, bityo urwo rubanza rukaba ruteshejwe agaciro hashingiwe ku ngingo ya 27 y'itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko kuko rwaciwe n'urukiko rutabifitiye ububasha kuko amasezerano y'ubugure bwaho hantu haburanwa bugaragaza ko haguzwe 1.400.000frw, kandi akaba ntayindi expertise yagaragajwe yerekana ko uwo mutungo waba ufite agaciro kari hejuru ya 20.000.000frw.

III. ICYEMEZO CY'URUKIKO

[23] Rwemeje ko urubanza RC 00026/2022/TGI/GIC rwaciwe n'Urukiko Rwisumbuye rwa Gicumbi kuwa 07/03/2023 ruvanyweho kuko rwaciwe n'urukiko rutabifitiye ububasha;

[24] Ruvuze ko ufite inyungu ashobora kongera kurega mu buryo bukurikije amategeko;

[25] Rutegetse amagarama Nzabandora Valeur yatanze ahwanye n'ibyakozwe mu rubanza.