

## GAKWAYA v. KAMINUZA Y’U RWANDA

[Rwanda URUKIKO RW’IKIRENGA – RADA 0029/11/CS (Mukanyundo, P.J., Rugabirwa na Hatangimbabazi, J.) 16 Gicurasi 2014]

*Amategeko agenga imiburanishirize y’imanza z’ubutegetsi – Gutakamba – Igihe cyemewe cyu gutanga ikirego nyuma yugutakambira icyemezo cy’umuyobozi – Iyo habayeho gutakamba inshuro irenze imwe, itakamba rya mbere rikozwe niryo riherwaho habarwa igihe cyo gutanga ikirego, kandi ntibiri ngombwa ko utakamba ategereza igisubizo cyeruye cy’umuyobozi kugira ngo abone gutanga ikirego cye, kuko mu gihe adasubijwe hagashira igihe giteganyijwe n’itegeko bifatwa ko ugutakamba kwe kutemewe – Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo 94 n’iya 339.*

**Incamake y’ikibazo:** Gakwaya yareze Kaminuza y’u Rwanda mu Rukiko Rukuru, urugereko rwa Nyanza asaba ko yasubizwa ku kazi k’ubwarimu yakoraga ndetse agahabwa n’ibyo afitiye uburenganzira byose yavukijwe no kumwirukana mu buryo bunyuranyije n’amategeko hiyongereyeho indishyi zinyuranye.

Kaminuza y’u Rwanda yatanze inzitizi ivuga ko ikirego cya Gakwaya kitakwakirwa kubera ko nyuma y’itakamba yatanze ikirego mu Rukiko akererewe kuko igihe giteganywa n’itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi cyari cyararenze; Urukiko Rukuru rwemeza ko ikirego cye kitakwacyirwa.

Gakwaya yajuririye Urukiko rw’Ikirenga avuga ko Urukiko Rukuru rwagombaga kwakira ikirego cye kuko atakererewe kururegera nyuma yo gutakambira Kaminuza y’u Rwanda, kugira ngo Kaminuza y’u Rwanda imusubize ku kazi inamuhe ibyo afitiye uburenganzira byose birimo imishahara itamuhembye igihe yamwirukanaga hiyongereyeho indishyi zinyuranye.

**Incamake y’icyemezo:** Iyo habayeho gutakamba inshuro irenze imwe, itakamba rya mbere rikozwe niryo riherwaho habarwa igihe cyo gutanga ikirego, kandi ntibiri ngombwa ko utakamba ategereza igisubizo cyeruye cy’umuyobozi kugira ngo abone gutanga ikirego cye, kuko mu gihe adasubijwe hagashira igihe giteganyijwe n’itegeko bifatwa ko ugutakamba kwe kutemewe; bityo ikirego cy’urega yagitanze akererewe kikaba kidakwiye kwakirwa.

**Ubujurire nta shingiro bufite.  
Amagarama y’urubanza aherereye ku wajuriye.**

**Amategeko yashingiweho:**

Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo 94 n’iya 339

**Imanza zifashishijwe:**

KIST v. Hashakimana, RADA 0001/11/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 27/04/2012.

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Gakwaya Emmanuel yareze Kaminuza y'u Rwanda mu Rukiko Rukuru, Urugereko rwa Nyanza, asaba ko yamusubiza ku kazi k'ubwarimu yakoraga muri iyo Kaminuza ikanamuha n'ibyo afitiye uburenganzira byose yamuvukije igihe yamwirukanaga ku kazi mu buryo bunyuranyije n'amategeko hyongereyeho n'indishyi zinyuranye.

[2] Iburanisha ry'urubanza ritangiye, uhagarariye Kaminuza y'u Rwanda yatanze inzitizi yo kutakira ikirego cya Gakwaya Emmanuel kubera ko nyuma y'itakamba, yaregeye Urukiko Rukuru igihe cy'amezi atandatu (6) giteganywa n'ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu cyararenze, urwo Rukiko rwaciye urubanza, rwemeza ko ikirego cya Gakwaya Emmanuel kitakiriwe.

[3] Urwo Rukiko rwasobanuye ko Gakwaya Emmanuel yatakambiye Kaminuza y'u Rwanda kuwa 25/09/2008, ntiyamuha igisubizo, ariko ko yaruregeye kuwa 22/09/2010 hashize hafi imyaka ibiri, ko ahubwo yagombaga kururegera bitarenze kuwa 24/05/2009, bityo ko ikirego cye kitagomba kwakirwa. Urwo Rukiko rwasobanuye kandi ko ibaruwa ya Gakwaya Emmanuel yo kuwa 07/06/2010 itafatwa nk'itakamba kuko yanditswemo ko Kaminuza y'u Rwanda igomba kumugezaho imishahara n'indishyi yayisabaga, itabikora akazitabaza ubutabera kugira ngo bumurenganure.

[4] Gakwaya Emmanuel yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwagombaga kwakira ikirego cye kuko atakererewe kururegera nyuma y'itakamba kugira ngo Kaminuza y'u Rwanda imusubize ku kazi inamuhe ibyo afitiye uburenganzira byose birimo imishahara itamuhembye igihe yamwirukanaga hyongereyeho indishyi zinyuranye.

[5] Urubanza rwaburanishijwe mu ruhamo kuwa 15/04/2014, Gakwaya Emmanuel yunganiwe na Me Mbonzimpaye Elias, naho Kaminuza y'u Rwanda ihagarariwe na Me Ntaganda Félix.

### II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

**Kumenya niba Urukiko Rukuru rwaribeshye mu kwemeza ko nyuma yo gutakamba Gakwaya Emmanuel yaruregeye akererewe.**

[6] Gakwaya Emmanuel n'umwunganira bavuga ko Urukiko Rukuru rutagombaga kwemeza ko yatakambye kuwa 25/09/2008 kubera ko icyo gihe yari atarabona icyemezo cy'Ubushinjacyaha cyashynguye dosiye ye by'agateganyo kuko yari agikurikiranyweho n'Ubushinjacyaha icyaha cyo kwihesha impamyabumenyi adakwiriyeye, ko kandi atagombaga gutakamba icyo gihe kuko iburanisha ry'ikirego cy'ikurikiranacyaha rihagarika iry'ikirego cy'imbonezamubano (Le criminel tient le civil en état), ko ahubwo yabonye icyo cyemezo kuwa

27/05/2010, atakambira Kaminuza y'u Rwanda kuwa 07/06/2010 kubera ko icyo cyemezo cyagaragaje ko atakoze icyaha yari akurikiranyweho.

[7] Umwunganira avuga kandi ko urwo Rukiko rutagombaga gushingira ku ngingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ngo rwemeze ko Gakwaya Emmanuel yaruregeye akerekerewe kuko yagombaga kubanza gutakambira Komisiyo y'Abakozi ba Leta iteganywa n'ingingo ya 19 y'Itegeko n° 22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati Rusange igenga Abakozi ba Leta kubera ko Kaminuza y'u Rwanda yihaye ububasha bwo kumufatira igihano cyo kumwirukana ku kazi cyo ku rwego rwa kabiri itabanje kubimenyeshya icyo Komisiyo.

[8] Uburanira Kaminuza y'u Rwanda avuga ko nyuma yo gutakamba, Gakwaya Emmanuel yarageye Urukiko Rukuru amezi atandatu (6) ateganywa n'ingingo ya 339 y'Itegeko n° 18/2004 ryavuzwe haruguru yararenze kuko yamwirukanye ku kazi kuwa 09/05/2007, yandika ayitakambira kuwa 25/09/2008 ntiyabona igisubizo, ariko ko yarageye urwo Rukiko akerekerewe kuwa 22/09/2010.

[9] Avuga kandi ko ibyo Gakwaya Emmanuel aburanisha by'uko nyuma yo gutakambira Kaminuza y'u Rwanda atagombaga guhita ayirega mu Rukiko Rukuru atari yabona icyemezo cy'Ubushinjacyaha gishyingura dosiye ye by'agateganyo nta shingiro bifite, kuko iburanisha ry'ikirego cy'ikurikiranacyaha ku cyaha cy'inyandiko-mpimbano yari akurikiranyweho ritandukanye n'iburanisha ry'ikirego cy'imihanire y'amakosa yaba yakoze mu kazi ke (L'action pénale est indépendante de l'action disciplinaire).

## **UKO URUKIKO RUBIBONA**

[10] Ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ryakurikizwaga igihe GAKWAYA Emmanuel yirukanwaga, iteganywa ko "Ikirego gisaba gukuraho icyemezo cy'umutegetsu cyakirwa gusa icyerekeye icyemezo cy'umutegetsu cyeruye cyangwa kiteruye. Mbere yo gutanga ikirego, unenga icyemezo cy'umutegetsu agomba kubanza gutakambira umutegetsu wagifashe. Umutegetsu utakambiwe, agomba gusubiza ubwo butakambe mu gihe cy'amezi abiri (2) abarwa uherye umunsi yabuboneyeho. Iyo adasubije, ubutakambe bufatwa ko atabwemeye. Mu gihe uwatakambye atishimiye igisubizo yahawe, afite igihe cy'amezi atandatu (6) cyo kuregera Urukiko gitangira kubarwa kuwa ku munsi yabuboneyeho igisubizo, yaba nta gisubizo yabonye, icyo gihe kigatangira kubarwa nyuma y'amezi abiri avugwa mu gika kibanziriza iki".

[11] Naho ingingo ya 94 y'Itegeko rimaze kuvugwa haruguru, ikavugaga ko "Impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy'umuburanyi hatinjiwe mu iremezo ryacyo nko kurenza igihe cyo kurega".

[12] Ku birebana n'uru rubanza, dosiye igaragaza ko Ubuyobozi bwa Kaminuza y'u Rwanda bwandikiye Gakwaya Emmanuel ibaruwa yo kuwa 09/05/2007 bumumenyeshya ko bumwirukanye ku kazi kuko Inama Nyobozi yabwo yateranye kuwa 30/04/2007 yasanze

impamyabumenyi ya “Master’s n’iya PHD degrees” yakoresheje mu gusaba kuzamurwa mu ntera nta gaciro zifite.

[13] Gakwaya Emmanuel yandikiye ubwo Buyobozi ibaruwa yo kuwa 25/09/2008 asaba ko bwamusubiza uburenganzira bwe bwose burimo imishahara n’ibindi afitiye uburenganzira bwamuvukije igihe bwamwirukanaga kuko urubanza RPA 0160/07/DP/NYA rwaciwe n’Urukiko Rukuru kuwa 02/07/2007, rwagaragaje ko atakoze icyaha cy’inyandiko-mpimbano cyatumye ahagarikwa ku kazi, anasaba ko bwavana cyangwa bwakosora ibyo Inama Nyobozi yabwo yo kuwa 30/04/2007 yamwanditseho mu myanzuro yayo kuko bimuhamya icyaha atakoze.

[14] Gakwaya Emmanuel yandikiye kandi ubwo Buyobozi ibaruwa yo kuwa 07/06/2010, abumenyeshya icyemezo cy’Ubushinjacyaha cyo kuwa 27/05/2010 kigaragaza ko dosiye ye yashyinguwe by’agateganyo, anasaba ubwo Buyobozi ko bwamwishyura imishahara ye y’amezi 38 butamuhembye hiyongereyeho n’indishyi, ko nibutabimuha, aziyambaza ubutabera mu gihe cy’iminsi itanu (5) kugira ngo bumurenganure.

[15] Kuwa 22/09/2010, Gakwaya Emmanuel yareze Ubuyobozi bwa Kaminuza y’u Rwanda mu Rukiko Rukuru, Urugereko rwa Nyanza nk’uko bigaragazwa n’inyandiko ye itanga ikirego iri muri dosiye abusaba kumusubiza ku kazi no kumuha indishyi zinyuranye.

[16] Urukiko rurasanga ibaruwa yo kuwa 25/09/2008, Gakwaya Emmanuel yandikiye Ubuyobozi bwa Kaminuza y’u Rwanda ariyo ikwiye gufatwa nk’itakamba kuko aricyo gihe yabwandikiye ibaruwa abusaba ko bwavanaho cyangwa bwakosora icyemezo bwamufatiye cyo kumwirukana ku kazi kugira ngo bukamusubizeho no kumuha n’ibindi byose afitiye uburenganzira yavukijwe igihe bwamwirukanaga.

[17] Urukiko rurasanga ibaruwa yo kuwa 07/06/2010, Gakwaya Emmanuel yandikiye Ubuyobozi bwa Kaminuza y’u Rwanda itafatwa nk’itakamba, ko ahubwo yafatwa nk’iyabumenyeshaga icyemezo cy’Ubushinjacyaha cyo kuwa 27/05/2010 cyashyinyuye dosiye ye by’agateganyo, ko kandi yafatwa nk’integuza yabuhaga yuko nibutamwishyura imishahara ye y’amezi 38 butamuhembye n’ibindi afitiye uburenganzira, aziyambaza ubutabera mu gihe cy’iminsi itanu (5) kugira ngo bumurenganure.

[18] Ibyo bihujwe kandi n’ibyemejwe n’Urukiko rw’Ikirenga mu rubanza RADA 0001/11/CS rwaciwe kuwa 27/04/2012<sup>1</sup>, aho rwasobanuye ko hatabaho gutakambira umutegetsi wafashe icyemezo inshuro nyinshi, ko ahubwo itakamba rya mbere rikozwe ariryo rihervaho habarwa igihe cyo gutanga ikirego, ko kandi bitari ngombwa ko utakamba ategereza igisubizo cyeruye cy’umuyobozi kugira ngo abone gutanga ikirego cye, kuko mu gihe adasubijwe hagashira amezi (2), bifatwa nk’aho yahakaniwe, akaba afite amezi atandatu (6) kugira ngo aregere urukiko.

[19] Urukiko rurasanga rero kuba Ubuyobozi bwa Kaminuza y’u Rwanda bwarandikiye Gakwaya Emmanuel bumumenyeshya ko yirukanwe ku kazi kuwa 09/05/2007, akabutakambira kuwa 25/09/2008, bukakira ibaruwa ye ibutakambira kuwa 26/09/2008, ariko ntibumuhe igisubizo, nyamara Gakwaya Emmanuel akaba yarabureze mu Rukiko Rukuru kuwa 22/09/2010, bigaragara ko yabureze muri uru Rukiko igihe cy’amezi atandatu (6) cyateganywaga n’ingingo

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<sup>1</sup>KIST v. Hashakimana Anastase RADA 0001/11/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 27/04/2012,.

ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru cyararenze, kuko umunsi wa nyuma yagombaga kuburega ari kuwa 25/05/2009, bityo ikirego cye kikaba kitagomba kwakirwa hakurikijwe ibiteganywa n'ingingo ya 94 y'Itegeko ryavuzwe haruguru

### **III. ICYEMEZO CY'URUKIKO**

[20] Rwemeje ko ubujurire bwa Gakwaya Emmanuel nta shingiro bufite;

[21] Rwemeje ko imikirize y'urubanza RAD 0016/10/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, kuwa 15/07/2011 idahindutse;

[22] Rutegetse Gakwaya Emmanuel gutanga amagarama y'uru rubanza angana na 50.500 Frw habariwemo n'ayo yaciwe mu Rukiko Rukuru rw'Ubucuruzi, atayatangira mu gihe cy'iminsi umunani, ayo mafaranga akavanwa mu byo ku ngufu za Leta.