NGABONZIZA NA MUGENZI WE v. MIRAVUMBA

[Rwanda URUKIKO RW'IKIRENGA – RADA 0052/13/CS (Kaitesi R., P.J., Mukandamage na Rugabirwa, J.) 10 Mutarama 2014]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Ikirego cyihutirwa – Guhagarika iragizwa ry'urubanza mu gihe urubanza rurutambamira rutaracibwa – Guhagarika irangizarubanza ntibibangamira icibwa ry'urubanza mu mizi mu gihe ntacyo umucamanza yavuze ku byerekeranye n'icibwa ry'urubanza mu mizi – Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 180 na 320.

Incamake y'ikibazo: Ngabonziza Bosco na Mugabo Semahore Jules bareze Ikigo cy'igihugu gishinzwe umutungo kamere mu Rwanda (RNRA) mu Rukiko Rukuru basaba ko ikibanza nº 11528 cyandikwa kuri Ngabonziza naho nº 11508 kikandikwa kuri Mugabo Semahore. Urukiko rwategetse ko ibyo bibanza bibandikwaho. Miravumba yatambamiye urwo rubanza, ariko mu gihe urubanza rutambama rutaracibwa mu mizi, Miravumba atanga ikirego cyihutirwa kigamije guhagarika irangiza ry'urubanza RAD 0084/12/HC/KIG yatambamiye kuko nawe afite inyandiko z'ubutaka z'ibyo bibanza maze Urukiko rutegeka ko irangizwa ry'urwo rubanza rihagarara.

Ngabonziza Bosco na Mugabo Semahore Jules bajuririye icyo cyemezo mu Rukiko rw'Ikirenga bavuga ko umucamanza yabangamiye icibwa ry'urubanza mu mizi, ngo kandi Miravumba icyo asaba mu kirego cyihutirwa gihura neza n'icyo asaba mu kirego cy'iremezo ngo kandi nta bwihutire buhari kuko Miravumba yategereza igihe urubanza rwe ruzaburanishirizwa.

Miravumba yiregura avuga ko ubwihutire bugaragazwa n'uko Ngabonziza na Mugabo bahawe kashe mpuruza ku rubanza rwatambamiwe, kandi rukaba rwarategetse RNRA kubaha inyandiko mpamo z'ubutaka ku buryo baramutse banditsweho ibyo bibanza byatera Miravumba igihombo kidasubirwaho.

Incamake y'icyemezo: 1. Icyemezo cy'umucamanza ku kirego cyihutirwa, gitegeka ihagarikwa ry'irangizarubanza ku ihinduzamutungo utimukanwa mu gihe urubanza rurutambamira rutaracibwa, ntacyo kiba kibangamiye icibwa ry'urubanza mu mizi mu gihe nta n'icyo umucamanza yavuze k'ugomba guhabwa inyandiko mpamo z'ubutaka.

Ubujurire nta shingiro bufite.
Amagarama aherereye ku bajuriye.

Amategeko yashingiweho:

Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 180 n'iya 360.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ngabonziza Bosco na Mugabo Semahore Jules bareze Ikigo gishinzwe umutungo kamere mu Rwanda (RNRA) mu Rukiko Rukuru, basaba ko ikibanza nº 11528 cyandikwa kuri Ngabonziza agahabwa n'impapuro zacyo, naho ikibanza nº 11508 kikandikwa kuri Mugabo Semahore Jules agahabwa n'impapuro zacyo, urwo rukiko, mu rubanza RAD 0084/12/HC/KIG, rutegeka ko bandikwaho ibyo bibanza.

[2] Miravumba Olivier yatambamiye urwo rubanza mu Rukiko Rukuru, ikirego gihabwa nº RAD 0092/13/KIG, ariko mu gihe urubanza rutaracibwa mu mizi atanga ikirego kihutirwa nº RAD 0094/13/HC/KIG kigamije guhagarika irangiza ry'urubanza RAD 0084/12/HC/KIG, urukiko rusanga icyo kirego gifite ishingiro, rutegeka ko irangizwa ryarwo rihagarara kubera ko Miravumba nawe afite ibyangombwa by'icyo kibanza yahawe n'inzego zibifitiye ububasha, kandi ko harimo n'inyubako ze, kumuvanamo bikaba byamuteza igihombo.

[3] Ngabonziza Bosco na Mugabo Semahore Jules bajuririye icyo cyemezo mu Rukiko rw'Ikirenga bavuga ko umucamnza yabangamiye icibwa ry'urubanza mu mizi, ko atagaragaje igihombo kidasubirwaho Miravumba yagira urubanza rubaye rurangijwe, ko nta bwihutire buhari ko kandi nta nyungu afite mu rubanza yatambamiye no mu kirego cyihutirwa.

[4] Iburanisha ry'urubanza ryabaye mu ruhame tariki ya 31/12/2013, Ngabonziza Bosco na Mugabo Semahore Jules baburanirwa na Me Karamira Jacques, Ikigo gishinzwe umutungo kamere mu Rwanda (RNRA) gihagarariwe na Me Rubango Epimaque, intumwa ya Leta, naho Miravumba Olivier aburanirwa na Me Buzayire Angèle.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO

Kumenya niba irangizwa ry'urubanza RAD 0084/12/HC/KIG rikwiye kuba rihagaze mu gihe urubaza RAD 0092/13/KIG rurutambamira rutaracibwa.

[5] Me Karamira Jacques uburanira Ngabonziza Bosco na Mugabo Semahore Jules avuga ko urukiko rwemeje ko irangizwa ry'urubanza RAD 0084/12/HC/KIG rihagarara kubera ko ruramutse rushyizwe mu bikorwa byatera Miravumba igihombo kidasubirwaho, nyamara ntirwagaraza icyo gihombo, cyane cyane ko ikiburanwa ari ugushyira mu bikorwa ibyemezo by'inkiko, mu gihe Miravumba ariwe ufite ibyangombwa by'ubutaka budafite ikintu cyubatseho kandi butari ubwe.

[6] Me Karamira Jacques avuga kandi ko mu gufata icyemezo, umucamanza yabangamiye urubanza mu mizi anyuranije n'ibiteganywa mu ngingo ya 320 CPCCSA kubera ko mu rubanza RAD 0084/12/HC/KIG, Ikigo gishinzwe umutungo kamere mu Rwanda cyategetswe guha abo aburanira impapuro mpamo z'ubutaka, icyo Miravumba asaba mu kirego cyihutirwa kikaba gihura neza n'icyo asaba mu kirego cy'iremezo, ni ukuvuga kuburizwamo kw'itangwa ry'izo mpapuro zagombaga guhabwa Ngabonziza na Mugabo.

[7] Me Karamira Jacques avuga na none ko nta bwihutirwe buhari kuko ntacyatuma Miravumba atategereza igihe urubanza rwe ruzaburanishirizwa kuko ibyo asaba byo

kuburizamo itangwa ry'impapuro mpamo z'ubutaka ashobora kuzabihabwa mu mizi y'urubanza. Yongeraho ko nta n'inyungu afite mu rubanza yatambamiye kimwe no muri iki kirego kihutirwa kuko ikibanza yita ko ari icye gifite nº 3554 avuga ko yaguze na Nyiraneza Félicité, mu gihe Ngabonziza we afite ikibanza nº 11528 yahawe n'Umujyi wa Kigali naho Mugabo afite ikibanza nº 11508 nawe yahawe n'Umujyi wa Kigali, akaba rero nta nyungu afite yo kubangamira ibibanza bibiri icyarimwe cyane cyane ko Mugabo ntaho ahuriye n'ikibanza nº 3554 Miravumba yita icye.

[8] Me Buzayire Angèle uburanira Miravumba Olivier avuga ko umucamanza yagaragaje neza mu ngingo ya 11 y'urubanza rujuririrwa aho yahereye ku bwiregure bwa Miravumba ko ubwihutirwe bugaragazwa n'uko Ngabonziza na Mugabo bahawe kashe mpuruza ku rubanza RAD 0084/12/HC/KIG rwategetse Ikigo Gishinzwe Umutungo Kamere kubaha inyandiko mpamo z'ubutaka ku buryo baramutse banditsweho ibyo bibanza byatera Miravumba igihombo kidasubirwaho.

[9] Avuga na none ko yagaragaje icyo gihombo ashingiye kw'ibaruwa yo kuwa 02/02/2012 Umunyamabanga Nshingwabikorwa w'Umurenge wa Kimironko yandikiye Miravumba n'iyo kuwa 05/03/2012 Umuyobozi w'Akarere ka Gasabo igaragaza ko hari ibikorwa by'ubwubatsi Miravumba yashyize muri ibyo bibanza, cyane cyane ko nawe agaragaza ko afite ibyangombwa yahawe n'inzego zibifitiye ububasha.

[10] Ku bijyanye n'uko umucamanza yabangamiye icibwa ry'urubanza mu mizi, Me BUZAYIRE avuga ko nta shingiro bifite kuko umucamanza yemeje ko irangizwa ry'urubanza RAD 0084/12/HC/KIG ryaba rihagaze kugeza igihe urubanza RAD 0092/13/HC/KIG ruzacibwa mu mizi yarwo, ubu rukaba rwaranahawe itariki y'inama ntegurarubanza yo kuwa 21/11/2013. Asanga na none mu kirego cy'iremezo Miravumba yararegeye gutambamira urubanza RAD 0084/12/HC/KIG, bitandukanye n'ibyo yaregeye mu kirego kihutirwa ahagarika irangizwa ryarwo.

[11] Ku bijyanye n'inyungu Miravumba afite muri izi manza, zombi, Me Buzayire avuga ko urubanza rwatambamiwe ari urwa Ngabonziza, Mugabo n'Ikigo Gishinzwe Umutungo Kamere, akaba asanga ikibazo cy'ibibanza kizasuzumwa igihe cy'iburanisha ry'urubanza mu mizi.

[12] Me Rubango Epimaque avuga ko nta kihutirwa kugirango urubanza RAD 0084/12/HC/KIG rurangizwe kuko igihe urubanza rurutambamira ruzacibwa aribwo Ikigo gishinzwe umutungo kamere mu Rwanda (RNRA) kizamenya uwo impapuro mpamo z'ubutakaka zigomba guhereraho.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 180 igika cya 4 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "gutambamira urubanza rwaciwe ntibihagarika irangizwa ryarwo, keretse iyo rihagaritswe n'urukiko rwaregewe, bisabwe n'umuburanyi", naho ingingo ya 320 igika cya mbere yaryo ikavuga ko "umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihutirwa, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo".

[14] Izi ngingo zumvikanisha ko kugirango irangizwa ry'urubanza rwatambamiwe rihagarare, umuburanyi agomba kubisaba urukiko rwaregewe, bivuze ko agomba no kugaragaza impamvu abisaba, umucamanza akazisuzuma akabona gufata icyemezo cy'agateganyo, ariko kitabangamiye icibwa ry'urubanza mu mizi.

[15] Urukiko rurasanga mu rubanza ku kirego cyihutirwa rwajuririwe, umucamanza yaragaragaje ko byihutirwa guhagarika irangiza ry'urubanza RAD 0084/12/HC/KIG kubera ko rwamaze guterwaho kashe mpuruza ngo rurangizwe, ategeka ko irangizwa ryarwo ryaba rihagaze mu gihe urubanza RAD 0092/HC/13/KIG Miravumba yatanzemo ikirego kirutambamira ruburanisha mu mizi kubera ko nawe avuga ko afite ibyangombwa by'ubutaka bugiye gutangirwa impapuro mpamo n'Ikigo gishinzwe umutungo kamere mu Rwanda (RNRA).

[16] Urukiko rurasanga rero icyo cyemezo kitabangamiye icibwa ry'urubanza mu mizi kuko ntacyo umucamanza yavuze ku byerekeranye n'ugomba guhambwa inyandiko mpamo z'ubutaka hagati ya Ngabonziza, Mugabo na Miravumba.

[17] Ku byerekeranye n'igihombo Miravumba yaterwa no kurangiza urubanza RAD 0084/12/HC/KIG, urukiko rurasanga atari cyo cy'ibanze cyashingirwaho mu gutegeka ko irangizarubanza rihagarara, ahubwo, nk'uko urukiko rubanza rwabyemeje, byaba byiza rihagaritswe kugira ngo hamenyekane koko ugomba guhabwa ibyangombwa by'ibibanza bivugwa, ibyo bikaba bizaburanwa igihe cy'iburanisha ry'urubanza mu mizi.

[18] Hashingiwe rero kubimaze kuvugwa, urukiko rurasanga ubujurire bwatanzwe na Ngabonziza na Mugabo nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko ubujurire bwa Ngabonziza Bosco na Mugabo Semahore Jules ku rubanza RADA 0094/13/HC/KIG rugamije guhagarika irangizwa ry'urubanza RADA 0084/12/HC/KIG nta shingiro bufite.

[20] Rutegetse Ngabonziza Bosco na Mugabo Semahore Jules gufatanya kwishyura amafaranga 14.200 y'amagarama y'urubanza, batayatanga ayo mafaranga agakurwa mu byabo ku ngufu za Leta.