UMUJYI WA KIGALI N'ABANDI v. KARIMBA

[Rwanda URUKIKO RW'IKIRENGA – RDAA 0040/11/CS – RADAA 0058/12/CS (Mugenzi, P.J., Kanyange na Munyangeri, J.) 28 Werurwe 2014]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Inenge y'imyandikire mu nyandiko itanga ikirengo – Guta agaciro k'inyandiko kubera inenge y'imyandikire – Kwandika gusubirishamo urubanza aho kuba kurujuririra ni ikosa ry'imyandikire riri mu rwego rw'inenge zitatuma igikorwa cy'ubujurire giteshwa agaciro mu gihe hatagaragajwe ko biteganyijwe n'itegeko ku buryo budashidikanywa;hari umuhango simusiga cyangwa w'indemyagihugu utarubahirijwe, cyangwa ngoumuburanyi usaba iryo tesha-gaciro agaragaze ko byagize icyo bimwangiriza kuko bishobora gukosorwa – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 92.

Incamake y'ikibazo: Karimba yareze Umujyi wa Kigali mu Rukiko Rukuru asaba gutesha agaciro icyemezo N° 2638/07.1.06/09 kimwambura ikibanza n° 1634 kikagiha Nkusi Rukeba, asaba, indishyi n'amafaranga y'ikurikirana rubanza. Urwo Rukikorwagobokesheje ku gahato Nkusi Rukeba ariko ntiyitaba, rwemeza ko icyo cyemezo kivanyweho, rutegeka Umujyi wa Kigali guha Karimba indishyi z'akababaro, amafaranga y'ikurikirana rubanza n'igihembo cy'avoka.

Umujyi wa Kigali wajuririye urwo rubanza mu Rukiko rw'Ikirenga, ariko na Nkusi Rukeba asubirishamo urwo rubanza avuga ko yahamagawe mu buryo bunyuranyije n'amategeko. Karimba yatanze inzitizi yo kutaburanisha urubanza RAD 0117/11/HC/KIG rukoherezwa mu Rukiko rw'Ikirenga kuko urubanza rusubirishwamo (RAD 0136/09/HC/KIG) rwajuririwe mu Rukiko rw'Ikirenga kuri nomero RADA 0040/11/CS, Urukiko rufata icyemezo cyo kutakira ngo rusuzume iyo nzitizi, ruvuga ko Karimba yabisabye impitagihe. Karimba yajuririye icyo cyemezo cy'Urukiko Rukuru mu Rukiko rw'Ikirenga, ariko Urukiko Rukuru rukomeza kuburanisha urubanza RADA 0117/11/HC/KG, maze rwemeza ko urubanza RADA 0136/09/HC/KIG ruteshejwe agaciro.

Karimba yajuririye urwo rubanza mu Rukiko rw'Ikirenga, asaba ko imanza RADA 0040/11/CS (ubujurire bw'Umujyi wa Kigali kuri RAD 0136/09/HC/KIG) na RADA 0058/12/CS (ubujurire bwe kuri RAD 0117/11/HC/KIG) zahuzwa zikaburanishirizwa hamwe. Umujyi wa Kigali uvuga ko ntaho zihuriye, kuko ababuranyi atari bamwe.

Umujyi wa Kigali waretse ubujurire bwawo, ndetse na Karimba areka ubwe ku cyemezo cy'Urukiko Rukuru cyo kwanga kwohereza mu Rukiko rw'Ikirenga urubanza rusubirishamo urundi.

Nkusiyabyukije inzitizi yo kutakira ikirego cy'ubujurire bwa Karimba kuko yakinyujije mu nzira ebyiri icyarimwe: iyo gusubirishamo urubanza, n'iyo kurujuririra; Karimba we akavuga ko habayeho ikosa ry'imyandikire ariko handitswe ibaruha ikosora iyo myandikire ku buryo ikirego cyabo ari ubujurire gusa.

Incamake y'icyemezo: Kwandika gusubirishamo urubanza aho kuba kurujuririra ni ikosa ry'imyandikire riri mu rwego rw'inenge zitatuma igikorwa cy'ubujurire giteshwa agaciro mu gihe hatagaragajwe kobiteganyijwe n'itegeko ku buryo budashidikanywa; hari umuhango simusiga cyangwa w'indemyagihugu utarubahirijwe, cyangwa ngoumuburanyi usaba iryo tesha-gaciro agaragaze ko byagize icyo bimwangiriza.

Inzitizi nta shingiro ifite;
Iburanisha mu mizi rizakomeza.
Amagarama y'urubanza abaye asubitswe.

Amategeko yashingiweho:
Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 92 n'iya 93.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 17/01/1992, Sezoya Antoine w'umurundi yahawe fiche cadastrale y'ikibanza n° 1634 yari yaraguze na Habiyakare Faustin kuwa 12/02/1986. Mu 1994, Sezoya yahungiye i Burundi asize yubatse inzu muri icyo kibanza.

[2] Kuwa 15/01/1998 Karimba Gaetan yasabye Umujyi wa Kigali icyo kibanza, umusaba kubanza kwishyura 424.599 frw y'ibikorwa byarimo, maze kuwa 17/01/1999, kimwandikwaho ahabwa fiche cadastrale, ndetse kuwa 28/02/2000 basinyana kontaro y'ubukode bwacyo y'imyaka 3 yagombaga kurangira kuwa 31/01/2004.

[3] Kuwa 17/01/2007, Sezoya yagurishije Nkusi Rukeba Daphy cya kibanza, ahagarariwe na Uwizeye Marie Patricie yari yarahaye procuration kuwa 26/12/2006.

[4] Kuwa 16/07/2009, Umuyobozi w'Umujyi wa Kigali yafashe icyemezo REF N° 2638/07.1.06/09 gisubiza Nkusi Rukeba ikibanza yaguze[1]bituma Karimba arega Umujyi wa Kigali mu Rukiko Rukuru, asaba gutesha agaciro icyemezo N° 2638/07.1.06/09 cyo kuwa 16/07/2009 cyavuzwe haruguru kimwambura ikibanza n° 1634 kikagiha Nkusi Rukeba, anasaba indishyi zingana na 4.000.000Frw na 600.000Frw y'ikurikirana rubanza.

[5] Kuwa 12/08/2011, Urukiko rwaciye urubanza RAD 0136/09/HC/KIG rwari rwagobokeshejwemo ku gahato Nkusi Rukeba ariko ntiyitaba, rwemeza ko icyemezo REF N° 2638/07.1.06/09 kivanyweho, rutegeka Umujyi wa Kigali guha Karimba 400.000 frw y'indishyi z'akababaro na 600.000 frw y'ikurikirana rubanza n'igihembo cy'avoka, rusobanura ko Umujyi wa Kigali udashobora kwivuguruza ku cyemezo wafashe utanga ibyangombwa ngo wongere ubihe undi bitanyuze mu nzira zemewe n'amategeko ngo ugaragaze ko ibyo byangombwa byataye agaciro.

[6] Kuwa 10/09/2011, Umujyi wa Kigali wajuririye urwo rubanza mu Rukiko rw'Ikirenga, ubujurire bwandikwa kuri RADA 0040/11/CS, bukorerwa ibanzirizasuzuma, Umucamanza yemeza ko bwaje mu buryo no mu nzira biteganywa n'amategeko, ariko kuwa 26/08/2011, Nkusi Rukeba yasubirishijemo urubanza RAD 0136/09/HC/KIG avuga ko yahamagawe mu buryo bunyuranyije n'amategeko kuko yahamagajwe aho adatuye, kandi

[1]Ashingiye ku nama yo ku wa 10/09/2009 abayobozi b'Umujyi wa Kigali, ab'Akarere ka Nyarugenge, ab'Umurenge wa Muhima n'inteko y'abaturage b'Akagari ka Rugenge bakoze isuzuma ikibazo cy'icyo kibanza.

n'iyo nyandiko imuhamagara ikaba itagaragaza amazina y'uwayitanze n'icyo akora, ikirego cye cyandikwa kuri RAD 0117/11/HC/KIG.

[7] Kuwa 28/09/2012, Urukiko rwemeje ko Nkusi Rukeba yemerewe gusubirishamo urubanza RAD 0136/09/HC/KIG, kuwa 16/11/2012, rufata icyemezo ku nzitizi Karimba yatangaga yo kutaburanisha urubanza RAD 0117/11/HC/KIG rukoherezwa mu Rukiko rw'Ikirenga kuko urubanza rusubirishwamo (RAD 0136/09/HC/KIG) rwajuririwe mu Rukiko rw'Ikirenga kuri nomero RADA 0040/11/CS, Urukiko rwemeza kutakira ngo rusuzume iyo nzitizi, ruvuga ko Karimba yabisabye impitagihe.

[8] Kuwa 23/11/2012, Karimba yajuririye icyo cyemezo (cyo mu rubanza RAD 0117/11/HC/KIG) mu Rukiko rw'Ikirenga, ubujurire buhabwa n° RADA 0058/12/CS, ariko Urukiko Rukuru rukomeza kuburanisha urubanza RAD 0117/11/HC/KIG, maze kuwa 13/03/2013, rwemeza ko urubanza RAD 0136/09/HC/KIG ruteshejwe agaciro, rwemeza ko icyemezo cyafashwe n'Ubuyobozi bw'Umujyi wa Kigali gisubiza Nkusi Rukeba inzu gifite agaciro.

[9] Urwo Rukiko rwasobanuye ko amasezerano y'ubukode bw'ikibanza bw'imyaka itatu Karimba yagiranye n'Umujyi wa Kigali yarangije igihe cyayo, akaba atari uburenganzira yahawe buhoraho, ruvuga kandi ko kwivuguruza kw'Umujyi wa Kigali wari waramubwiye ko ikibanza ari icye gufite ishingiro kuko byagaragaye ko hari harabaye amakosa mu kukimuha, kuko nta kindi kigaragaza uburyo hari undi wabonye uburenganzira ku kibanza bitanyuze kuri nyiracyo Sezoya wakigurishije na Nkusi. Rwanavuze ko Nkusi atahabwa indishyi yasabaga kuko atabashije kugaragaza icyo yatakaje.

[10] Kuwa 11/04/2013, Karimba yajuririye urwo rubanza mu Rukiko rw'Ikirenga, ubujurire bwe bwandikwa kuri n° RADA 0027/13/CS, mu ibaruwa ye yo kuwa 19/8/2013, asaba ko imanza RADA 0040/11/CS (ubujurire bw'Umujyi wa Kigali kuri RAD 0136/09/HC/KIG) na RADA 0058/12/CS (ubujurire bwe kuri RAD 0117/11/HC/KIG) zahuzwa zikaburanishirizwa hamwe, Uburanira Umujyi wa Kigali we akavuga ko ntaho zihuriye, kuko ababuranyi atari bamwe.

[11] Urubanza rwaburanishijwe mu ruhame kuwa 25/02/2014, Umujyi wa Kigali uburanirwa na Me Mbarushimana J.M.Vianney, Intumwa ya Leta, Karimba aburanirwa na Me Rwangabwoba Bernard, naho Nkusi Rukeba aburanirwa na Me Ndondera Christian.

[12] Uwo munsi Me Mbarushimana uhagarariye Umujyi wa Kigali, yavuze ko uretse ubujurire bwawo, ndetse n'uburanira Karimba avuga ko Karimba aretse ubwe ku cyemezo cy'Urukiko Rukuru cyo kwanga kwohereza mu Rukiko rw'Ikirenga urubanza rusubirishamo urundi (opposition).

[13] Urukiko rumaze kwumva impande zose zemeranywa ko ukwo kureka ibirego by'ubujurire guhuje n'amategeko, rwarakwemeye rushingiye ku ngingo ya 26 CPCCSA, hasigara hagibwa impaka ku nzitizi yatanzwe n'uburanira Nkusi yo kutakira ubujurire busigaye bwa Karimba (RADA 0027/13/CS).

Ku byerekeye inzitizi y'ukutakira ubujurire bwa Karimba.

[14] Me Ndondera uhagarariye Nkusi yabyukije inzitizi y'ukutakira ikirego cy'ubujurire bwa Karimba, kuko yakinyujije mu nzira ebyiri icyarimwe, kandi amategeko atabyemera: iyo gusubirishamo urubanza, n'iyo kurujuririra.

[15] Uburanira Karimba we avuga ko n'ubwo habaye imyandikire mibi mu gutanga ubujurire bwabo, hakandikwamo "gusubirishamo" hananditswe "kujurira", hakurikiye ibaruwa ikosora iyo myandikire, ku buryo byumvikana ko ikirego cyabo ari ubujurire gusa.

[16] Uburanira Umujyi wa Kigali kimwe n'uburanira Nkusi bavuga ko iyo baruwa yaje ikosora batayibonye, naho uburanira Karimba akavuga ko hari na "accusé de reception" y'Umujyi wa Kigali, hakaba n'inyandiko y'umuhesha w'inkiko igaragaza ko iyo baruwa yashyikirijwe Nkusi akanga gusinya, mu gihe umuburanira avuga ko ataba mu Rwanda, ko haba gusa umugore we.

[17] Urukiko rwafashe icyemezo cyo kuba ruhagaritse iburanisha, kugira ngo rubanze rusuzume inzitizi yavuzwe haruguru y'ukutakira ubujurire bwa Karimba, rumenyesha ababuranyi ko icyemezo kuri iyo nzitizi kizamenyeshwa ku wa 28/03/2014.

UKO URUKIKO RUBIBONA

[18] Ku byerekeye inzitizi y'ukutakira ubujurire bwa Karimba ku mpamvu y'uko bwanyujijwe mu nzira ebyiri bikaba bitemewe n'amategeko nk'uko uburanira Nkusi abivuga, asobanura ko ubwo bujurire butagaragaza icyo nyirabwo ashaka, niba koko ari ubujurire cyangwa ari ugusubirishamo urubanza, Urukiko rurasanga, hakwiye gusuzumwa niba koko ari ikosa ry'imyandikire ryabaye rikaba ryarabashaga gukosorwa n'ibaruwa uburanira Karimba avuga yanditse igamije iryo kosora. Ibyo bigomba gusuzumwa harebwa inyandiko y'ubujurire, inyandiko ivugwa yo gukosora, n'imenyesha ry'iyi nyandiko ku bandi baburanyi.

[19] Dosiye y'uru rubanza igaragaza ko ikirego cy'ubujurire bwa Karimba mu Rukiko rw'Ikirenga cyatanzwe muri ubu buryo: RADA 0027/13/CS, ikiregerwa giteye gitya: "Kujuririra urubanza RAD 0117/11/HC/KIG rwaciwe kuwa 13/3/2013 - Gusubirishamo urubanza RAD 0136/09/HC/KIG rwaciwe kuwa 12/08/2011 - Gutesha agaciro icyemezo cyo kuwa 16/07/2009 - Indishyi z'akababaro zihwanye na 400.000Frw- Amafaranga y'ikurikiranarubanza n'igihembo cya avoka = 600.000Frw".

[20] Mu ibaruwa ye yo kuwa 9/01/2014 iri muri dosiye, ikaba yarashyikirijwe Umujyi wa Kigali uwo munsi nk'uko bigaragazwa na kashe y'Umujyi wa Kigali na sinyatire y'uwayakiriye kuri réception, ikaba kandi yaranashyikirijwe Nkusi Rukeba uwo munsi nk'uko byemejwe n'Umuhesha w'inkiko Rusunika Jonas wanditse akanasinyira kuri iyo baruwa ko yayishyikirije Nkusi akanga kuyisinya, iyo baruwa ikaba yari igamije gusobanura ko n'ubwo mu ibaruwa y'ubujurire hagiye mo ijambo "gusubirishamo", ikirego cyatanzwe atari icyo gusubirishamo urubanza ahubwo ari icy'ubujurire.

[21] Urukiko rurasanga, nta mpamvu igaragara yatuma ikirego Karimba yashyikirije Urukiko rw'Ikirenga nyuma yo kutishimira urubanza rwaciwe n'Urukiko Rukuru, cyafatwa nko gusubirishamo urubanza aho kuba kurujuririra, akaba ahubwo ari ikosa ry'imyandikire yanakosoye mu ibaruwa yo kuwa 09/01/2014 (art. 93 CPCCSA), riri mu rwego rw'inenge zitatuma igikorwa cy'ubujurire giteshwa agaciro, mu gihe hatagaragajwe ko hari nibura kimwe mu biteganywa n'ingingo ya 92 CPCCSA cyujujwe, biri mo kuba itegeko ryarateganyije itesha-gaciro, kuba hari umuhango simusiga cyangwa w'indemyagihugu utarubahirijwe, cyangwa kuba umuburanyi usaba iryo tesha-gaciro agaragaza ko byagize icyo bimwangiriza.

[22] Hashingiwe ku bisobanuro bitanzwe haruguru, Urukiko rurasanga inzitizi yatanzwe n'uburanira Nkusi yo kutakira ubujurire bwa KARIMBA nta shingiro ifite.

II. ICYEMEZO CY'URUKIKO

[23] Rwemeje ko inzitizi yatanzwe na Nkusi yo kutakira ubujurire bwa Karimba ku rubanza RAD 0136/09/HC/KIG nta shingiro ifite;

[24] Rutegetse ko iburanisha ry'urubanza mu mizi rizaba ku wa 14/04/2014.

[25] Ruvuze ko amagarama y'urubanza asubitswe.