UBUSHINJACYAHA v. HABYARIMANA

[Rwanda URUKIKO RW'IKIRENGA – RPA 0152/12/CS (Havugiyaremye, P.J., Kanyange na Munyangeri N., J.) 10 Ukwakira 2014]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ifungwa rinyuranije n'amategeko – Gufungwa mu gihe hatanzwe ubujurire ku rubanza rwaciwe rudategeka ko uwarezwe ahita afungwa – Mu gihe Urukiko rwaciye urubanza rutigeze rutegeka ko uwahamwe n'icyaha ahita afungwa cyangwa ngo byemezwe n'Urukiko rwajuririwe, gufunga uwaciriwe urubanza biba binyuranije n'amategeko – Itegeko nº 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, n'ingingo ya 183.

Incamake y'ikibazo: Habyarimana, Manirakiza na Habimana bakurikiranywe n'Ubushinjacyaha bubarega kuba baragize uruhare mu gitero cyagabwe kwa Nzeyimana Jérôme, bamwicira umugore, nawe basiga bamuciye ukuboko.

Urukiko rwemeje ko abakurikiranywe bose bahamwa n'icyaha cy'ubwicanyi rubahanisha igifungo cya burundu no guha Nzeyimana Jérôme indishyi z'akababaro zingana na 20.000.000 frw, gutanga 4% y'ayo mafaranga angana na 800.000Frw no gutanga amagarama y'urubanza. Habyarimana yajuririye urwo rubanza mu Rukiko rw'Ikirenga ariko nyuma aza gufatwa afungirwa muri gereza ya Rusizi maze atanga ikirego mu Rukiko rw'Ikirenga avuga ko yafunzwe mu buryo bunyuranije n'amategeko kandi urwo rubanza yararuburanye adafunze akarujuririra.

Habimana nawe yajuririye urwo rubanza mu Rukiko rw'Ikirenga anarusubirishamo mu Rukiko Rukuru, ariko rwemeza ko icyo kirego kitakiriwe.

Incamake y'icyemezo: Mu gihe Urukiko rwaciye urubanza rutigeze rutegeka ko uwahamwe n'icyaha ahita afungwa cyangwa ngo byemezwe n'Urukiko rwajuririwe, kumufunga biba binyuranyije n'amategeko.

Abajuriye bafunzwe mu buryo bunyuranyije n'amategeko.
Abaregwa bagomba guhita bafungurwa bakaburana badafunze.
Urubanza rugomba gukomereza muri uru Rukiko.

Amategeko yashingiweho:
Itegeko nº 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 183.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwakurikiranye mu Rukiko Rukuru, Urugereko rwa Rusizi Habyarimana Philbert, Manirakiza Emmanuel na Habimana Melchior bubarega kuba baragize uruhare mu gitero cyagabwe mu ijoro ryo ku itariki ya 15/10/1996, i Gishagara muri

Nyamaronko, Umurenge wa Nyakabuye ho mu Karere ka Rusizi ubu, kwa Nzeyimana Jérôme, kimwicira umugore, nawe basiga bamuciye ukuboko.

[2] Mu rubanza RP 0009/06/HC/RSZ rwaciwe kuwa 28/03/2012 nyuma y'uko ruburanishijwe abaregwa batari bitabye ariko barahamagawe mu buryo bukurikije amategeko, Urukiko rwemeje ko Habyarimana Philbert, Habimana Melchior na Manirakiza Emmanuel bahamwa n'icyaha cy'ubwicanyi bakurikiranyweho, rubahanisha igihano cy'igifungo cya burundu no guha Nzeyimana Jérôme indishyi z'akababaro zingana na 20.000.000frw, gutanga 4% y'ayo mafaranga angana na 800.000Frw no gutanga amagarama y'urubanza.

[3] Habyarimana yajuririye urwo rubanza mu Rukiko rw'Ikirenga kuwa 24/04/2012.

[4] Kuwa 23/07/2013 yarafashwe afungirwa muri Gereza ya Rusizi, mu ibaruwa yo kuwa 09/04/2014 atanga ikirego mu Rukiko rw'Ikirenga ko yafunzwe mu buryo bunyuranije n'amategeko kandi urubanza RP 0009/06/HC/RSZ afungiye yararuciriwe adafunze akarujuririra.

[5] Habimana Melchior nawe yajuririye urwo rubanza mu Rukiko rw'Ikirenga kuwa 24/05/2012, anarusubirishamo mu Rukiko Rukuru, ariko mu rubanza rwaciwe kuwa 26/03/2013 urukiko rwemeza ko ikirego yatanze cyo gusubirishamo urubanza kitakiriwe.

[6] Urubanza rwaburanishijwe mu ruhame kuwa 15/09/2014 Habyarimana yunganiwe na Me Rwangabwoba Bernard, Habimana Melchior yunganiwe na Me Mihigo Bernard, Nzeyimana Jérôme yunganiwe na Me Niyibizi Remy, naho Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric.

[7] Mbere yo kwinjira mu mizi y'urubanza Urukiko rwaburanishije ku kibazo cya Habyarimana Philbert na Habimana Melchior ko bafunzwe mu buryo bunyuranije n'amategeko kuko bafashwe n'Ubushinjacyaha mu gihe bari barajuriye kandi baraburanye badafunze, ko ibyo binyuranije n'ibiteganywa n'ingingo ya 183 y'Itegeko ryerekeranye n'imiburanishirize y'imanza z'inshinjabyaha.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba Habyarimana Philbert na Habimana Melchior bafunzwe mu buryo bunyuranije n'amategeko.

[8] Habyarimana Philbert avuga ko urubanza RP 0009/06/HC/RSZ rwaciwe adahari, aho amenyeye imikirize yarwo arajurira ariko nyuma y'ubwo bujurire arafatwa arafungwa, nyuma y'igihe gito arafungurwa ariko nyuma y'iminsi itatu nanone yongera gufungwa, akaba asaba gufungurwa akaburana ari hanze nk'uko yari ameze mbere ubwo urubanza yajuririye rwaburanishwaga n'igihe yajuriraga.

[9] Me Rwangabwoba umwunganira avuga ko na mbere hose mu gihe yari yarafunzwe by'agateganyo Habyarimana yari yahawe uburenganzira bwo kuburana ari hanze ntihagira ubijuririra, ko hashingiwe ku biteganywa n'ingingo ya 183 y'Itegeko nº 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko, "uwaburanye adafunze agakatirwa ari hanze nyuma akajurira akomeza kuburana ubujurire bwe ari hanze, keretse iyo urukiko rwategetse ko ahita afatwa agafungwa". Avuga ko Ubushinjacyaha

bwafashe icyemezo muri rusange ku bantu babiri nyamara bakurikije inzira z'ubujurire zitandukanye.

[10] Uhagarariye Ubushinjacyaha yamenyesheje urukiko ko atagishingiye ku myanzuro yatanzwe mbere na mugenzi we avuga ko Ubushinjacyaha bushingira ku ngingo ya 227 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko ku byerekeranye n'irangizwa ry'imanza Ubushinjacyaha bukurikirana ibyerekeye igifungo, rukibwiriza gufunga abakatiwe n'urukiko, bityo bukaba bukurikiza icyemezo cy'urukiko.

[11] Ku kibazo cyo kumenya uko ahuza ingingo ya 227 y'iryo tegeko avuga ko ari yo yashingiweho n'ingingo yaryo ya 183, avuga ko Habyarimana na Habimana bafunzwe Ubushinjacyaha bumaze kumenyeshwa n'Urukiko ko batajuriye, bukaba bubifitiye n'icyemezo cyatanzwe n'urukiko.

[12] Me Mihigo wunganira Habimana Melchior avuga ko urubanza ruburanishwa ubu rutarageza igihe cyo kurangizwa, ko ingingo ya 227 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha Ubushinjacyaha bushingiraho nta shingiro ifite, hakaba hagomba gushingirwa ku ngingo ya 183.

[13] Asobanura ko ingingo ya 183 igika cya mbere y'itegeko nº 30/2013 ryo kuwa 24/05/2013 CPP (ryatangiye gukurikizwa kuwa 08/07/2013) isobanura ko iyo ushinjwa icyaha aburana adafunze agakatirwa igihano cy'igifungo, aguma kuburana adafunze iyo yajuririye icyo cyemezo, keretse iyo urukiko rwategetse ko afatwa agafungwa, ko Habimana yajuririye urubanza kuwa 24/05/2012 afungwa kuwa 23/07/2013 nyamara bitarigeze bitegekwa n'urukiko rwaciye urubanza cyangwa ngo Urukiko rw'Ikirenga rwajuririwe rube rwarabitegetse. Avuga ko kuba Ubushinjacyaha buvuga ko Habimana Melchior afunzwe hashingiwe ku rubanza RP 0024/12/HC/RSZ bigaragaza akarengane gakomeye kuko afunze nta cyemezo cy'urukiko giteganya icyo gifungo kuko n'urukiko yasubirishijemo urubanza rwemeje ko uko gusubirishamo kutakiriwe.

UKO URUKIKO RUBIBONA

[14] Ubushinjacyaha buvuga ko Habyarimana na Habimana bafunzwe mu rwego rwo kurangiza urubanza rwaciwe kandi ko icyo gihe batari bajuriye.

[15] Dosiye y'urubanza igaragaza ko urubanza RP 0009/06/HC/RSZ rwaciwe kuwa 28/03/2012 rwajuririwe na Habyarimana kuwa 24/04/2012 nk'uko bigaragara ku ibaruwa yandikiye Urukiko rw'Ikirenga, naho Habimana arujurira kuwa 24/05/2012 bigaragazwa n'icyemezo cyatanzwe n'Ubwanditsi bw'Urukiko rw'Ikirenga cyo kuwa 28/03/2013 amaze kumenyeshwa imikirize yarwo, bivuze ko mu gihe bigaragara ko abaregwa bajuriye ubujurire bwabo bukaba butarafatwaho icyemezo n'urukiko rwajuririwe, urubanza rwajuririwe rutaragera igihe cyo kurangizwa nk'uko biteganywa n'ingingo ya 180 y'itegeko nº 30/2013 ryo kuwa 24/05/2013 iteganya ko "irangizwa ry'urubanza riba rihagaritswe kugeza ku munsi igihe cyo kujurira kirangiriraho cyangwa niba umuntu yarajuriye, kugeza igihe hafatiwe icyemezo kuri ubwo bujurire".

[16] Nanone kandi ingingo ya 183 y'iryo tegeko iteganya ibikurikira:

[17] "Iyo ushinjwa aburana adafunze, agakatirwa igihano cy'igifungo, aguma kuburana adafunze iyo yajuririye icyo cyemezo, keretse iyo urukiko rwategetse ko ahita afatwa agafungwa".

[18] "Ashobora gufatwa agafungwa iyo habonetse impamvu zikomeye kandi zidasanzwe zikagaragarizwa urukiko rwajuririwe".

[19] Inyandiko ziri muri dosiye y'urubanza zigaragaza ko Habyarimana na Habimana baburanye badafunze, bakatirwa igihano cy'igifungo, urukiko ntirwategeka ko bahita bafatwa bagafungwa, bajuririra urwo rubanza nk'uko byasobanuwe, hagati aho barafungwa nta cyemezo kirafatwa kuri ubwo bujurire cyangwa ngo urukiko rwajuririwe, rwo rwonyine rubasha kwemeza ko abo bantu hagati aho bafungwa, rube rwarabitegetse nkuko biteganywa n'igika cya kabiri cy'ingingo ya 183 y'itegeko rivuzwe haruguru.

[20] Urukiko rusanga amakuru n'inyandiko byashingiweho n'Ubushinjacyaha bufunga Habyarimana na Habimana atari byo byagombaga gushingirwaho kuko binyuranije n'ukuri.

[21] Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga ifungwa rya Habyarimana Philbert na Habimana Melchior ryarakozwe mu buryo bunyuranye n'amategeko, bityo bakaba bagomba gufungurwa bakaburana badafunze.

III. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko Habyarimana Philbert na Habimana Melchior bafunzwe mu buryo bunyuranije n'amategeko;

[23] Rutegetse ko bahita bafungurwa bakaburana urubanza rwabo mu mizi badafunze;

[24] Ruvuze ko iburanisha ry'uru rubanza mu mizi rizakomeza kuwa 29/10/ 2014.