UWIMANA v. MUGABO

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0069/11/CS (Mutashya, P.J., Mukanyundo na Rugabirwa, J.) 03 Gicurasi 2013]

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Inzitizi yo kutakira ikirego – Igenwa ry'agaciro k'ikiburanwa – Agaciro k'ikiburanwa kagenwa n'urega mu nyandiko itanga ikirego kandi ntigashobora guhindurwa n'umwe mu baburanyi cyangwa Urukiko ku rwego rw'ubujurire – Itegeko Ngenga Nº001/2004 ryo kuwa 29/04/2004 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 43(7).

Incamake y'ikibazo: Uwimana yagejeje ikibazo cye kuri komisiyo ishinzwe gukemura ibibazo bijyanye n'amasambu avuga ko Mugabo yamuhuguje ibibanza bye 4AB yari yahawe mu rwego rwa gahunda ya TTP (Temporary Tent Permanent), yitwaje ko yari umuyobozi w'Umurenge wa Kimironko; maze iyo komisiyo imusubiza ibibanza bye bibiri yasabaga.

Mugabo ntiyishimiye icyo cyemezo maze aregera Urukiko Rwisumbuye rwa Gasabo asaba ko yasubizwa ibyo bibanza avuga ko Uwimana yabeshye Komisiyo igakora amakosa yo kubimuha kandi atari ibye. Urwo Rukiko rwemeje ko icyo kirego nta shingiro gifite ahubwo ibyo bibanza ari bya Uwimana.

Mugabo yajuririye Urukiko Rukuru avuga ko umucamanza atashishoje neza kandi ko atitaye ku bimenyetso yatanze. Urwo Rukiko rwemeje ko ubujurire bwe bufite ishingiro kandi asubirana ibibanza 4AB maze rutegeka Uwimana guha Mugabo indishyi z'akababaro hamwe n'igihembo cy'avoka.

Uwimana yajuririye Urukiko rw'Ikirenga avuga ko umucamanza yabogamye igihe yemezaga ko yabeshye Komisiyo, ko kandi rwemeje ko hirengagijwe ibimenyetso byatanzwe na Mugabo nyamara ibyo bimenyetso bifite inenge kuko byabonetse mu buryo butazwi, ikindi akaba ari uko umucamanza yanze kubaza abatangabuhamya yari yatanze ndetse anirengagiza ko yerekanye ibimenyetso ko ari gakondo w'aho ibibanza biherereye.

Mbere y'uko iburanisha ritangira, Mugabo yazamuye inzitizi yo kutakira ubujurire bwa Uwimana kuko butari mu bubasha bw'uru Rukiko hakurikijwe agaciro k'ikiburanwa ashingiye ku kuba Uwimana yararegeye ibibanza birimo ibyumba by'amashuri atandatu nyamara akaba atari ibyo byumba ubwabyo biburanwa kandi agaciro k'ibyo bibanza kakaba katagera ku mafaranga 20.000.000 kubera ko mu mwaka wa 2007, ikibanza cyagurishwaga amafaranga 4.500.000.

Uwimana yiregura kuri iyo nzitizi avuga ko agaciro k'ikiburanwa kagenwa n'urega mu nyandiko itanga ikirego kandi ko hatigeze habaho impaka ku gaciro kacyo ndetse kadashobora guhindurirwa mu rwego rw'ubujurire.

Incamake y'icyemezo: Agaciro k'ikiburanwa kagenwa n'urega mu nyandiko itanga ikirego kandi ku rwego rw'ubujurire Urukiko cyangwa umwe mu baburanyi ntibashobora kugahindura, kubw'ibyo rero inzitizi yatanzwe na Mugabo ko agaciro k'ikiburanwa katari mu bubasha bw'Urukiko rw'Ikirenga nta shingiro ifite kuko inyandiko itanga ikirego igaragaza ko agaciro k'ikiburanwa ari 40,000,000Frw.

Inzitizi nta shingiro ifite.
Amagarama y'urubanza arasubitswe.

Amategeko yashingiweho:
Itegeko Ngenga Nº 001/2004 ryo kuwa 29/04/2004 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 43(7).

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uwimana Falida yagiranye ikibazo na Mugabo Casimir avuga ko uyu yamuhuguje ikibanza 4AB yari yahawe mu rwego rwa gahunda ya TTP (Temporary Tent Permanent), yitwaje ko yari umuyobozi w'Umurenge wa Kimironko. Ikibazo yakigejeje kuri Komisiyo yari ishinzwe gukemura ibibazo bijyanye n'amasambu, imusubiza ibibanza bye 2 yasabaga. Mugabo Casimir ntiyishimiye icyo cyemezo maze aregera Urukiko Rwisumbuye rwa Gasabo asaba ko yasubizwa ibyo bibanza avuga ko Uwimana Falida yabeshye Komisiyo igakora amakosa yo kubimuha kandi atari ibye.

[2] Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza rwemeza ko ikirego cya Mugabo Casimir nta shingiro gifite, ko ibibanza 2 biburanwa ari ibya Uwimana Falida. Mugabo Casimir yajuririye urubanza mu Rukiko Rukuru avuga ko umucamanza atashishoje neza, ko kandi atitaye ku bimenyetso yahawe byerekana ko ibyo bibanza ari ibye.

[3] Urukiko Rukuru rwaciye urubanza rwemeza ko ubujurire bwa Mugabo Casimir bufite ishingiro, ko ikibanza 4AB gisubirana Mugabo Casimir, rutegeka Uwimana Falida guha Mugabo Casimir indishyi zingana na 2.700.000Frw akubiyemo indishyi z'akababaro n'igihembo cy'avoka.

[4] Uwimana Falida yajuririye urubanza mu Rukiko rw'Ikirenga avuga ko umucamanza yabogamye ku buryo bukabije mu kwemeza ko yabeshye Komisiyo. Avuga ko umucamanza wo mu Rukiko Rukuru yemeje ko hirengagijwe ibimenyetso byatanzwe na Mugabo Casimir nyamara ibyo bimenyetso bifite inenge kuko uburyo byabonetsemo butazwi. Avuga kandi ko umucamanza wo mu Rukiko Rukuru yanze kubaza abatangabuhamya yari yatanze (Uwimana Falida), anirengagiza ko yerekanye ibimenyetso by'uko ari gakondo w'aho biriya bibanza biri.

[5] Iburanisha ry'urubanza ryabereye mu ruhame kuwa 26/03/2013, Uwimana Falida yunganiwe na Me Musonera Alexis naho Mugabo Casimir yunganiwe na Me Buhuru Pierre Célestin, Me Bugabo Laurent na Me Ndegeya Shaban. Mugabo Casimir n'abamwunganira basabye ko mbere y'uko bagira icyo bavuga ku bujurire bwa Uwimana Falida, Urukiko rwabanza gusuzuma ibijyanye n'ubujurire bwe kuko babona budakwiye kwakirwa kubera ko butari mu bubasha bw'Urukiko rw'Ikirenga hakurikijwe agaciro k'ikiburanwa kumvikanyweho n'ababuranyi.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba ubujurire bwa Uwimana Falida buri mu bubasha bw'Urukiko rw'Ikirenga nk'uko umucamanza w'ibanzirizasuzuma yabyemeje.

[6] Me Buhuru Pierre Célestin avuga ko ubujurire bwa Uwimana Falida butari mu bubasha bw'Urukiko rw'Ikirenga hashingiwe ku byo bumvikanye ku kiburanwa mu Rukiko Rukuru, ikibazo kikaba ari uko Uwimana Falida yarengereye ku kibanza kirimo ibyumba by'amashuri bitandatu ariko ko atari ibyo byumba baburana, ko ikiburanwa ari ikibanza Uwimana Falida avuga ko yanyazwe, naho ibikorwa birimo byashyizwemo na Mugabo Casimir bikaba ataribyo baburana. Akomeza avuga ko agaciro k'ikiburanwa katigeze kemezwa, ko kandi ukurikije igihe ikibazo cyavukiye muri 2007 agaciro k'icyo kibanza katagera kuri 20.000.000Frw kuko muri 2007 ikibanza gifite ibipimo bya 20m kuri 30m cyagurishwaga amafaranga 4.500.000, bo bakaba barabiboneye ku mafaranga 100.000.

[7] Ku bijyanye n'agaciro k'ikiburanwa ka 40.000.000Frw katanzwe mu Rukiko Rwisumbuye rwa Gasabo, abunganira Mugabo Casimir bavuga ko ako gaciro ari igiteranyo cy'umushinga wose wa Mugabo Casimir, ko bitakwitiranywa n'agaciro k'ikiburanwa kuko na Uwimana Falida ubwe azi ko ibibanza birindwi byose atari ibye, ko ibyo aburana yavuze ko yambuwe ari ibibanza bibiri gusa, kandi ko umucamanza wo mu Rukiko Rukuru yabisobanuye neza, n'icyemezo yabifasheho kikaba kitarigeze kijuririrwa.

[8] Me Musonera wunganira Uwimana Falida, avuga ko umutungo wose Mugabo Casimir yigaruriye ufite agaciro ka 40.000.000Frw, ko urega ariwe ugena agaciro k'ikiburanwa atari uregwa cyangwa Urukiko bakagena, ko rero niyo byaba byanditswe mu rubanza rwaciwe n'Urukiko Rukuru, umucamanza yaba yaravugiye Uwimana ibyo atavuze, agaciro k'ikiburanwa kakaba kadashobora guhindurirwa mu rwego rw'ubujurire nk'uko biteganywa n'ingingo ya 4 y'Itegeko Nº 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi niyo ababuranyi babyumvikanaho bikaba bidashoboka kuko batemerewe guhindura ibyo itegeko riteganya .

[9] Me Musonera abajijwe niba barigeze kumvikana n'abo baburana ku gaciro k'ikiburanwa asubiza ko imbibi z'ikiburanwa zigenwa n'urega. Ko guhindura ikiburanwa bidashoboka mu bujurire, ko kandi nta mpaka zigeze zibaho. Ko iyo haza kugibwa impaka, ariho hari kugaragazwa ikiburanwa icyo aricyo, ko kandi ibyo bitigeze bibaho, asoza avuga ko ikiburanwa ari umutungo wa Uwimana Falida ufite agaciro ka 40.000.000Frw wigabijwe na Mugabo Casimir.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 43 igika cya 7 y'Itegeko Ngenga Nº 001/2004 ryo kuwa 29/04/2004 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ryakoreshwaga igihe uru rubanza rwajuririrwaga, yateganyaga ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi, Urukiko Rukuru rwa Gisirikare iyo izo manza zagenwemo n'Urukiko indishyi zingana cyangwa zirenze amafaranga miliyoni makumyabiri (20.000.000Frw) hatitawe ku bwoko bwazo cyangwa se zifite agaciro kagenwe n'urega mu nyandiko itanga ikirego cyangwa kemejwe n'umucamanza igihe habaye impaka kangana cyangwa karenze amafaranga miliyoni makumyabiri (20.000.000Frw).

[11] Mu myanzuro yo gutanga ikirego mu Rukiko Rwisumbuye rwa Gasabo yo kuwa 18/01/2007 ya Mugabo Casimir arega Uwimana Falida, ikirego cyari gitanzwe muri aya magambo "Kuba Uwimana Falida yarantwaye ikibanza cyanjye nubatsemo ibyumba by'amashuri yigenga. Uwimana yikatiye ibibanza ahateganyijwe ikibuga cy'ishuri bityo akaba yaraburijemo umushinga w'amashuri ugizwe n'ibyumba bitandatu bisanzwe byubatse muri icyo kibanza. Uwo mutungo wose yigabije ukaba ufite agaciro karenze miliyoni mirongo ine 40.000.000Frw".

[12] Urukiko rurasanga urega ubwe yaragennye agaciro k'ikiburanwa mu rwego rwa mbere n'uregwa arakemera kuko nta mpaka zabaye kuri urwo rwego ngo noneho abe ari umucamanza ukagena nk'uko biteganywa n'ingingo ya 43(7º) y'Itegeko Ngenga Nº 001/2004 ryo kuwa 29/04/2004 ryavuzwe haruguru.

[13] Ku kibazo cy'ibyo uburanira Mugabo Casimir avuga yuko agaciro kahindukiye mu rwego rw'ubujurire n'ababuranyi ngo bakabyemeranyaho, Urukiko rurasanga hakurikijwe ingingo ya 43(7º) y'Itegeko Ngenga Nº 001/2004 ryo kuwa 29/04/2004 ryavuzwe, agaciro k'ikiburanwa kagenwe mu nyandiko itanga ikirego ntihagire n'impaka ziba ku ngano yako, urukiko rw'ubujurire cyangwa umwe mu baburanyi muri urwo rukiko badashobora kugahindura, uretse ko ntanahagaragara muri dosiye ko ababuranyi bemeranyije ko agaciro k'ikiburanwa gahindutse.

[14] Urukiko rurasanga nk'uko umucamanza w'ibanzirizasuzuma yabyemeje, kuba Uwimana Falida yaraburanye mu rwego rwa mbere ikibanza gifite agaciro ka 40.000.000Frw nk'uko kagaragara mu kirego, ibyo ubwabyo ari impamvu ituma Urukiko rw'Ikirenga rugira ububasha bwo kuburanisha ubujurire rwashyikirijwe na Uwimana Falida, bityo inzitizi yatanzwe na Mugabo Casimir ikaba nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[15] Rwemeje kwakira inzitizi yatanzwe na Mugabo Casimir, kuko yatanzwe mu buryo n'inzira bikurikije amategeko;

[16] Rwemeje ko nta shingiro ifite;

[17] Rwemeje ko ubujurire bwa Uwimana Falida buri mu bubasha bw'Urukiko rw'Ikirenga;

[18] Rwemeje ko urubanza ruzasubukurwa ku munsi ababuranyi bazamenyeshwa n'ubwanditsi bw'urukiko;

[19] Rutegetse ko amagarama y'urubanza abaye asubitswe.