NYIRAMANA v. NAYINO

[Rwanda URUKIKO RW'IKIRENGA – RCA 005/13/CS (Mutashya, P.J., Rugabirwa na Gakwaya, J.) 10 Gashyantare 2014]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Ubujurire – Ikirego cyihutirwa – Irangizarubanza – Ikirego kigamije guhagarika irangizarubanza – Ibirego byihutirwa bigomba kuba byujuje ibintu bitatu by'ingenzi aribyo ubwihutirwe kugira ngo bigire icyo biramira ku buryo bitinze haba igihombo kitagira igaruriro, kuba icyemezo ari icy'agateganyo no kuba kitagomba kubangamira urubanza mu mizi – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 316 n'iya 320.

Incamake y'ikibazo: Imvano y'uru rubanza RCA005/13/CS ni imanza RCA0111/12/HC/KIG na RCA0112/12/HC/KIG zaciwe n'Urukiko Rukuru kuwa 07/06/2013, Nyiramana akaba yaraziburanyemo na Nayino maze akazitsindwa kandi agategekwa kumusubiza imitungo baburanaga. Nyuma yaho Nyiramana yaje kuzisubirishamo ingingo nshya mu rubanza RC0385/13/HC/KIG maze ikirego cye kimaze kwandikwa aboneraho gutanga ikirego cyihutirwa RC0038/13/HC/KIG kigamije guhagarika irangiza rya ziriya manza zavuzwe haruguru kugeza igihe urubanza RC0385/13/HC/KIG ruciriwe, icyakora urukiko rwemeza ko ikirego cye cyihutirwa nta shingiro gifite.

Nyiramana ntiyishimiye imikirize y'urubanza rwaciwe, maze arujuririra mu Rukiko rw'Ikirenga. Mu mpamvu atanga, avuga ko yasohowe mu nzu hirengagijwe ko nta handi yabona aba nta n'ukundi yabaho, ndetse ko mu byafatiriwe harimo n'inzu yiyubakiye ku giti cye itarigeze iburanwaho kandi ko uwo mutungo wose uramutse ushyizwe mu maboko y'uwo baburana, kuwugaruza byazagorana.

Nayino Patricie we avuga ko hashize imyaka 7 atsindiye imitungo ye ariko akaba atarayisubizwa, ko kandi iyo nzu avuga ko itigeze iburanwa, igihe cy'urubanza mu mizi nikigera bizatangirwa ibimenyetso. Yongeraho ko ibyo Mukamana avuga nta bwihutire burimo, ko agomba gusubiza ibyo yatsindiwe kuko urubanza rwabaye itegeko rugomba kurangizwa, kwitwaza ko bakwicwa n'ubukene bakabura aho baba, we abimazemo imyaka 7 yarabuze aho aba kubera kudahabwa imitungo ye yatsindiye.

Incamake y'icyemezo: 1. Ibirego byihutirwa bigomba kuba byujujwe ibintu bitatu by'ingenzi aribyo ubwihutirwe kugira ngo bigire icyo biramira ku buryo bitinze haba igihombo kitagira igaruriro, kuba icyemezo ari icy'agateganyo no kuba kitagomba kubangamira urubanza mu mizi.

2. Kuba mu mitungo irangirizwaho urubanza haba harimo idahuye n'ikiburanwa ndetse n'iyahawe umwana urega arera, ntibyaba impamvu yo guhagarika irangiza ry'urubanza rwabaye itegeko kuko nta gihamya ndakuka ubisaba abitangira, kandi biramutse ari nako bimeze zaba ari impaka zivutse mu irangiza ry'imanza, bikababifite uko byateganyijwe mu mategeko.

3. Nta kosa umucamanza wo mu Rukiko Rukuru yakoze yemeza ko nta bimenyetso uwajuriye yerekanye by'ubwihutirwe buboneka mu kirego yatanze asaba guhagarika irangiza ry'urubanza, no muri uru rukiko akaba atarabashije kwerekana icyakononekara kitazabasha gusubizwa mu buryo mu gihe yaramuka atsinze urubanza yaregeye mu Rukiko Rukuru.

Ubujurire nta shingiro bufite.
Amagarama aherereye ku wajuriye.

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 316 n'iya 320.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma y'uko Nyiramana Chantal aburanye urubanza rufite numero RCA0111/12/HC/KIG na RCA0112/12/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 07/06/2013 agatsindwa agategekwa gusubiza imitungo uwitwa Nayino Patricie baburanaga, yarusubirishijemo ingingo nshya, ikirego gihabwa N° RC0385/13/HC/KIG.

[2] Amaze gutanga icyo kirego, yanatanze ikirego cyihutirwa kigamije guhagarika irangiza rya ruriya rubanza rwavuzwe haruguru kugeza igihe urubanza RC0385/13/HC/KIG ruciriwe, gihabwa N° RC0038/13/HC/KIG.

[3] Urubanza rwaciwe kuwa 10/09/2013, urukiko rwemeza ko ikirego cyihutirwa nta shingiro gifite. Nyuma Nyiramana Chantal yaje gutanga ikirego cyo gukosoza inenge yari mu myandikire irebana n'umwirondoro we, bikorwa mu rubanza RC0042/13/HC, icyemezo gikosora gifatwa kuwa 24/09/2013.

[4] Nyiramana Chantal ntabwo yishimiye imikirize y'urubanza rwaciwe, maze arujuririra mu Rukiko rw'Ikirenga. Mu mpamvu atanga, avuga ko yasohowe mu nzu hirengagijwe ko nta handi yabona aba nta n'ukundi yabaho, ko harimo n'inzu yafatiriwe kandi itarigeze iburanwaho.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 04/02/2014, Nyiramana Chantal aburanirwa na Me Butera Dismas naho Nayino Patricie aburanirwa na Me Kamali Nyampatsi Valens.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

[6] Ikibazo kigomba gusuzumwa muri uru rubanza, ni ukumenya niba ikirego cyihutirwa cyatanzwe na Nyiramana Chantal mu Rukiko Rukuru cyari cyujuje ibisabwa n'amategeko kugira ngo urubanza N° RCA0111/12/HC/KIG na N° RCA0112/12/HC/KIG yasubirishijemo ingingo nshya rutarangizwa.

[7] Me Butera Dismas uburanira Nyiramana Chantal avuga ko uwo aburanira yasohowe mu nzu hirengagijwe ko nta handi yabona aba nta n'ukundi yabaho, ko harimo n'inzu yafatiriwe kandi itarigeze iburanwaho. Avuga ko ruriya rubanza ruramutse rurangijwe,

byatera uwo aburanira igihombo gikomeye kuko mu mitungo yafatiriwe, harimo inzu Nyiramana Chantal abamo, izo yiyubakiye ku giti cye akodesha agakuramo amafaranga yo kumutunga n'abana be, ku buryo uwo mutungo wose uramutse ushyizwe mu maboko y'uwo baburana, byamutera igihombo gikomeye kubera ko yakurwa mu nzu bikamutera kwangara kandi urubanza rugikomeza, akabura ikimutunga n'abana be, kandi no kuyagaruza bikazagorana.

[8] Me Kamali uburanira Nayino Patricie we avuga ko hashize imyaka 7 Nayino atsindiye imitungo ye ariko akaba atarayisubizwa, ko kandi iyo nzu avuga ko ari iy'umwana we itigeze iburanwa, ko igihe nikigera bizatangirwa ibimenyetso. Ko kuba Umuhesha w'inkiko yaragiye gufatira inzu y'i Byumba, ari uko yashakaga ubwishyu bw'ibyo Mukamana agomba gusubiza, ko kandi ibyo Mukamana avuga nta bwihutire burimo, ko agomba gusubiza ibyo yatsindiwe kuko urubanza rwabaye itegeko rukaba rugomba kurangizwa, kwitwaza ko bakwicwa n'ubukene bakabura aho baba, Nayino we abimazemo imyaka 7 yarabuze aho aba kubera kudahabwa imitungo ye yatsindiye ubu akaba aba ku Kamonyi ku mukobwa we kandi ari umuntu ugeze mu za bukuru.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 316 y'itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihutirwa ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara". Naho ingingo ya 320 y'iryo tegeko igateganya ko "Umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihuta, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo".

[10] Isesengura ry'izi ngingo nk'uko byagiye binemazwa no mu zindi manza zaciwe n'uru Rukiko, ryerekana ko ibirego byihutirwa bigomba kuba byujujwe ibintu bitatu by'ingenzi aribyo ubwihutirwe kugira ngo bigire icyo biramira ku buryo bitinze haba igihombo kitagira igaruriro, kuba icyemezo ari icy'agateganyo no kuba kitagomba kubangamira urubanza mu mizi.

[11] Urukiko rurasanga impamvu Nyiramana Chantal atanga asaba ko irangiza ry'urubanza yasabiye gusubirishamo ingingo nshya ryahagarara, zitagaragaza nk'uko umucamanza wo mu Rukiko Rukuru yabyemeje, ubwihutirwe cyangwa igihombo ndasubirwaho kubera ko, kuvuga ko aramutse akuwe mu nzu yatsindiwe yabura aho aba, bitakwitiranywa no kuba byateza igihombo kitagira igaruriro kuko iyo nzu ntaho iba igiye iramutse inagurishijwe mu rwego rwo guhunga ko Nyiramana Chantal yazayitsindira mu kirego yatanze asubirishamo urubanza ingingo nshya, hari izindi nzira amategeko yateganyije yanyuramo kugirango ayigaruze.

[12] Ku bijyanye no kuvuga ko mu mitungo bashaka kurangirizaho urubanza yatsinzwe harimo idahuye n'ikiburanwa ndetse n'iyahawe umwana arera, Urukiko rurasanga nabyo bitaba impamvu yo guhagarika irangiza ry'urubanza rwabaye itegeko n'ubwo nta gihamya ndakuka abitangira, biramutse ari nako bimeze zaba ari impaka zivutse mu irangiza ry'imanza, ibi nabyo bikaba bifite uko byateganyijwe mu mategeko[1].

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[1] Reba ingingo ya 208 y'itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[13] Urukiko rurasanga nta kosa umucamanza wo mu Rukiko Rukuru yakoze yemeza ko nta bimenyetso Nyiramana Chantal yerekanye by'ubwihutirwe buboneka mu kirego yatanze asaba guhagarika irangiza ry'urubanza Nº RCA0111/12/HC/KIG na Nº RCA0112/12/HC/KIG rwaciwe n'Urukiko Rukuru mu gihe hagitegerejwe ko urubanza Nº RCA0385/13/HC/KIG rucibwa burundu, no muri uru rukiko akaba atarabashije kwerekana icyakononekara kitazabasha gusubizwa mu buryo mu gihe yaramuka atsinze urubanza yaregeye mu Rukiko Rukuru.

III. ICYEMEZO CY'URUKIKO

[14] Rwemeje kwakira ubujurire ku kirego cyihutirwa cyatanzwe na Nyiramana Chantal ariko nta shingiro bufite;

[15] Rutegetse Nyiramana Chantal gutanga amagarama y'urubanza angana na 21.800Frw akayatanga mu gihe gitegetswe, atayatanga agakurwa mu bye ku ngufu za Leta.