

**Re AKAGERA BUSINESS GROUP (IKIREGO KIGAMIJE
KUVANAHO INGINGO INYURANYIJE N'ITEGEKO
NSHINGA)**

[Rwanda URUKIKO RW'IKIRENGA – RS/SPEC/0001/16/CS (Rugege, P.J., Mukanyundo,
Hatangimbabazi, Kanyange, Mukamulisa, Rugabirwa, Hitiyaremye, Ngagi na
Nyirandabaruta, J.) 23 Nzeri 2016]

Itegeko Nshinga – Amategeko anyuranyije n'Itegeko Nshinga – Ikirego kigamije gukuraho ingingo ya 1(5) y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha – Umuburanyi w'umusoreshwa – Itangwa ry'ibimenyetso mu rwego rw'ubujurire – Kuba ababuranyi b'abasoreshwa batemerewe gutanga ibimenyetso bishya ku rwego rw'ubujurire ntibifatwa nko kubasumbanisha n'abandi baburanyi kuko bishingiye ku mwihariko wabo no ku nshingano bahabwa n'itegeko zo kubika ibitabo by'ibaruramari – Itegeko Nshinga ryo kuwa 4 Kamena 2003 nk'uko ryavugururwe mu 2015, ingingo ya 15 n'ya 16 – Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 53(2) – Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu ryo mu mwaka wa 1948, ingingo ya 7 – Amasezerano Mpuzamahanga ku burenganzira Mbenezamubano n'ubwa Politiki yo kuwa 16 Ukuboza 1966, ingingo ya 14 n'ya 26 – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 168(3) – Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha, ingingo ya 1(5).

Incamake y'ikibazo: ABG yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi irega Rwanda Revenue Authority (RRA) isaba ko umusoro yaciwe unganze na 1.050.442.993Frw wagabanywa. Urukiko Rukuru rw'Ubucuruzi rwemeje ko ABG itsinzwe no kutagaragaza ibimenyetso by'ibyo yaregeye. ABG yajuririye urwo rubanza mu Rukiko rw'Ikirenga ivuga ko hari ibimenyetso byashyikirijwe Urukiko Rukuru rw'Ubucuruzi rwanga kubisuzuma. Mu mwanzuro wo kwiregura, RRA yavuze ko ABG itagaragaje ibimenyetso by'ibyo iburana. Ubwo hakorwaga inama ntegururubanza mu Rukiko rw'Ikirenga, ABG yerekanye ibimenyetso yavugaga ko byirengagijwe maze RRA nayo ihita itegura imyanzuro y'inyongera isaba ko ibyo bimenyetso bitakwakirwa ngo bisuzumwe hashingiwe ku ngingo ya 1, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha.

ABG imaze kubona ibyo bimenyetso bitazitabwaho n'Urukiko ukundi, yahise itanga ikirego mu Rukiko rw'Ikirenga ivuga ko ingingo ya 1 igika cya 5 y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha RRA ishingiraho ikurwaho kuko isanga inyuranije n'ingingo ya 11 n'ya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryakurikizwaga igihe ikirego cyatangwaga, ikirego cyandikwa kuri RS/SPEC/0001/16/CS. Nyuma yaho icyo kirego gitangiwe, ABG yatanze ibisobanuro by'inyongera ku kirego yari yatanze igamije kwerekana uko ingingo z'Itegeko Nshinga zahindutse nyuma y'ivugururwa ryaryo mu mwaka wa 2015 aho ingingo ya 16 yahindutse iya 15 naho iya 11 ikaba yarabaye iya 16.

Incamake y'icyemezo: 1. Urukiko rurasanga ingingo ya mbere, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha, n'ubwo idafata ababuranyi b'abasoreshwa mu buryo bumwe

nk'ababuranyi mu zindi manza, ntigaragaramo ubusumbane imbere y'amategeko no kutarengerwa n'amategeko mu buryo bumwe, ndetse ikaba itanagaragaramo ivangura iryo ariryo ryose.

2. Kuba abasora batemerewe gutanga mu bujurire ibimenyetso batatanze mu gihe cy'igenzura, umusoresha we akaba abyemerewe, ntibyafatwa nk'ubusumbane mu bushobozi bwo kwisobanura imbere y'inkiko, ahubwo ni uko abasoreshwa aribo bonyine baba bafite ibyo bimenyetso bakaba bashobora kubitanga igihe bikenewe bityo bitewe n'umwihariko wabo, itegeko ribafata ku buryo butandukanye n'abandi baburanyi hashingiwe ku mpamvu zumvikana kandi zitagamije kubavutsa uburenganzira n'andi mahirwe bahabwa n'itegeko.

3. Ingingo y'itegeko isabirwa kuvanwaho, ntinyuranyije n'ingingo za 15 na 16 z'Itegeko Nshinga kuko idasumbanisha abantu imbere y'amategeko kandi ikaba itaragaza ivangura iryo ari ryo ryose.

**Ikirego nta shingiro gifite.
Amagarama y'urubanza aherereye k'urega.**

Amategeko yashingiweho:

Ayo mu Rwanda:

Itegeko Nshinga ryo kuwa 4 Kamena 2003 nk'uko ryavuguruwe mu 2015, ingingo ya 15 n'ya 16.

Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu, ryo mu mwaka wa 1948, ingingo ya 7.

Amasezerano Mpuzamahanga ku burenganzira Mbenezamubano n'ubwa Politiki, 1966, ingingo ya 14 n'ya 26.

Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 53(2).

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 168(3).

Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha, ingingo ya 1(5).

Ayo mu mahanga:

Itegeko Nshinga rya Repubulika ya Kenya 2010, ingingo ya 27 agace ka 1, 4 n'aka 5.

Itegeko Nshinga rya Repubulika ya Afrika y'Epfo, 1996, ingingo ya 9, para.1 n'ya 3.

Canadian Charter of Rights and Freedoms, ingingo ya 15.

Imanza zifashishijwe:

Izo mu mahanga:

Firma A. Racke v Hauptzollamt Mainz, Court of Justice of the European Union

Backus v. Fort St. Union Depot Co., 169 U.S. 557, 18 S. Ct. 445, 42 L. Ed. 853 (1898).

S v Lawrence 1997 (4) SA 1176 para. 44-45.

Eur.Court HR, Case "relating to certain aspects of the laws on the use of language in education in Belgium" judgment of 23 July 1968, series A, N°6., p.31.para 10.

UNHR, Dudko v. Australia, Comm. N°1347/2005, UN.Doc. CCPR//90/D/1347/2005 (Aug.29.2007 para 7.4.

Inyandiko z'abahanga zifashishijwe:

Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HRI/GEN/1/Rev.1 at 26 (1994).
Prinsloo Van der Linde 1997(3) SA 1012 CC para. 22.
Communication N°172/1984 S.W.M. Broeks v The Netherlands (views adopted on 9 April 1987) in UN Doc.
GOAR, A/42/40 P.150, para 13.
CJCE, aff. 283/83, 13 novembre 1984, Racke/Hauptzollamt Mainz, Rec., 1984, p.3791.;
CJCE, aff. 106/83, 13décembre 1984, Société Sermide, Rec., p.4209; CEDH, 6 Avril 2000, Thlimennos c. Grèce, N°34369/97.
Hogg “Proof of facts in Constitutional Cases (1976) 26.University of Toronto Law Journal 386 at 396-7.
United Nations Human Rights Committee, General Comment N°32, Article 14, Right to equality before Courts and tribunals and fair trial, UN.Doc. CCPR//G/32/Aug.23, 2007 para 13.

Urubanza

I. IMITERERE Y'URUBANZA

[1] **ABG** yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi irega Rwanda Revenue Authority (RRA) isaba ko umusoro yaciwe ungana na 1.050.442.993Frw wagabanywa. Urukiko Rukuru rw'Ubucuruzi rwacye urubanza kuwa 20/12/2012, rwemeza ko **ABG** itsinzwe no kutagaragaza ibimenyetso by'ibyo yaregeye. **ABG** yajuririyeye urwo rubanza mu Rukiko rw'Ikirenga ivuga ko hari ibimenyetso byashyikirijwe Urukiko Rukuru rw'Ubucuruzi rwanga kubisuzuma. Mu Rukiko rw'Ikirenga, urubanza rwanditswe kuri N°RCOMA0009/13/CS.

[2] Mu mwanzuro wo kwiregura, RRA yavuze ko **ABG** itagaragaje ibimenyetso by'ibyo iburana. Ubwo hakorwaga inama ntegururubanza mu Rukiko rw'Ikirenga, **ABG** yerekanye ibimenyetso yavugaga ko byirengagijwe. RRA yahise itegura imyanzuro y'inyongera isaba ko ibyo bimenyetso bitakwagirwa ngo bisuzumwe hashingiwe ku ngingo ya 1, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha.

[3] **ABG** yahise itanga ikirego mu Rukiko rw'Ikirenga ivuga ko ingingo ya 1 igika cya 5 y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha RRA ishingiraho ikurwaho kuko isanga inyuranije n'ingingo ya 11 n'ya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryavugururwe kugeza ubu, ikirego cyandikwa kuri N° RS/SPEC/0001/16/CS.

[4] Nyuma yaho icyo kirego gitangiye, habayeho ivugurura ry'Itegeko Nshinga. **ABG** yatanze ibisobanuro by'inyongera ku kirego yari yatanze igamije kwerekana uko ingingo z'Itegeko Nshinga zahindutse, iya 15 ikaba yarahoze ari iya 16, iya 16 yahoze ari ingingo ya 11. Ikirego cyasuzumwe mu iburanisha ryo kuwa 19/07/2016, **AKAGERA BUSINESS GROUP** ihagarariye na Me Nsengiyumva Abel naho Minisiteri y'Ubutabera yari yatumiwe kugira ngo igire icyo ivuga kuri iki kibazo, mu rubanza yari ihagarariye n'Intumwa ya Leta, Me Kabibi Speciose.

II. ISESENGURA RY'IKIBAZO KIRI MU RUBANZA

Kumenya niba ingingo ya 1 igika cya 5 y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha inyuranyije n'ingingo za 15 na 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryavugururwe muri 2015.

[5] Me Nsengiyumva Abel mu mwanya wa ABG, avuga ko Itegeko Nshinga mu ngingo yaryo ya 15 n'ya 16 rirengeraga abantu bose ku buryo bungana ndetse ko abanyarwanda bose bavukana kandi bagakomeza kugira uburenganzira bungana, ukabihuza n'ingingo ya 1, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha iteganya ko umusoresha atemerewe gutanga, ku rwego urwo ari rwo rwose rw'ubujurire, izindi nyandiko cyangwa ibitabo atagaragaje mu gihe cy'igenzura, ugasanga abasoresha nk'ababuranyi hari ibyo batemerewe mu manza z'imisoro nyamara abandi baburanyi babyemerewe mu zindi manza, ko ibyo bibavutsa uburenganzira bahabwa n'Itegeko Nshinga.

[6] Akomeza avuga ko kuba umusoresha afite inshingano zo kubika no kuzura ibitabo by'ibaruramari, bitaba impamvu yo kumutandukanya n'abandi baburanyi, ahubwo biramutse bigaragaye ko habayeho uburiganya mu gushaka kunyereza umusoro, uwabikoze yahanwa cyangwa se agacibwa umusoro munini nk'igihano, ariko ntabuzwe amahirwe yo gutanga ibimenyetso byamurengeraga igihe abibonye kuko hari igihe aba atazi ko byamugirira akamaro.

[7] Avuga kandi ko bitumvikana ukuntu mu zindi manza zitari iz'imisoro, ababuranyi bemerewe gutanga ibimenyetso mu nzego zose ndetse bikaba bitabujijwe mu rwego rw'ubujurire gutanga ingingo nshya zo kuburana cyangwa ibimenyetso bishya bitaburanyijwe mu rwego rwa mbere, ariko bikaba bitemewe mu manza z'imisoro kuko ho ubwo burenganzira bwo gutanga ibimenyetso aho urubanza rwaba ruze hose byemerewe gusa umusoresha ariko umusoresha we ntabyemerewe. Asoza avuga ko ibyo binyuranye n'Itegeko Nshinga kuko umusoresha nk'umuburanyi uburana urubanza rw'imisoro yaba adafashwe kimwe n'undi muburanyi uburana izindi manza kandi amahame y'ingenzi abagenga yakabaye amwe ibyo bikaba ari ivangura binyuranyije n'ingingo ya 15 n'ya 16 z'Itegeko Nshinga.

[8] Me Kabibi Spéciose Intumwa ya Leta, avuga ko ingingo ya 1, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha itanyuranye n'ingingo ya 15 n'ya 16 z'Itegeko Nshinga ryo mu mwaka wa 2003 ryavugururwe muri 2015, kuko iyo ngingo itagambiriye kubuza abasoresha gutanga ibimenyetso bya kamarampaka cyangwa se ibimenyetso byagaragaza ukuri nk'uko ABG ishaka kubyumvikanisha, ko ahubwo ishimangira inshingano z'umusoresha zo gutanga inyandiko n'ibitabo by'ubucuruzi aho akorera, ko anafite inshingano zo kubyerekana igihe cy'igenzura uretse igihe hari impamvu zifatika agaragaza. Avuga ko bidakwiye ko Itegeko rishyiraho izo nshingano ryasubira inyuma rikemerera umusoresha kuzana izo nyandiko n'ibitabo mu gihe cy'ubujurire nta mpamvu zifatika agaragaza zatumye atabitanga mu gihe cy'igenzura.

[9] Asobanura ko mu manza z'imisoro, umusoresha n'umusoresha batari mu byiciro no mu bihe bimwe ku buryo amategeko abagenga yabarengera kimwe, kuko RRA nta nshingano ifite zo gukora no kubika ibitabo by'ibaruramari ry'umusoresha, mu gihe ingingo ya 13 y'Itegeko N°25/2005 rigena imitunganyirize y'isoresha iha inshingano umucuruzi yo gutunga

ibitabo n'inyandiko by'ibaruramari bigaragaza ishusho nyakuri y'ubucuruzi bwe. Kuba umucuruzi afite inshingano zo kubitunga no kubibika, niyo mpamvu umugenzuzi w'umusoro agomba kubisanga aho akorera. Aramutse yemerewe kubitunga nyuma, inshingano yahawe yo kubitunga no kubitunga igihe bikenewe ntacyo yaba imaze.

[10] Asoza avuga ko ikindi gishimangira ko ababuranyi batari mu cyiciro kimwe batagomba no kugengwa n'amategeko amwe, ari uko mu manza zisanze igihe cyose umuburanyi yatungira ibimenyetso nta ngaruka byagira ku muburanyi mugenzi we ariko ku musoreshwa, hari igihe yakwimana ibitabo bye igihe cy'igenzura afite umugambi wo gushaka kunyereza umusoro kuko amafaranga yasohoye adashobora kugaragara kandi ariyo aherwaho hagenwa umusoro ugomba kwishyurwa.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 53, igika cya kabiri, y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ivuga ko Urukiko rw'Ikirenga ruburanisha (...) ibirego bisaba gukuraho Itegeko Ngenga, Itegeko cyangwa Itegeko-Teka kubera ko binyuranyije n'Itegeko Nshinga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga. Nkuko byavuzwe hejuru, ABG yareze isaba ko ingingo ya mbere, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzura Itegeko N°25/2005 rigena imitunganyirize y'isoresha ivanwaho kuko isanga inyuranye n'ingingo ya 15 n'ya 16 z'Itegeko Nshinga.

[12] Ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 nkuko ryavugururwe mu 2015 ivuga iti "Abantu bose barashyamba imbere y'amategeko. Itegeko ribarengera ku buryo bumwe", naho ingingo yaryo ya 16, ikavuga ko "Abanyarwanda bose bavukana kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana. Ivangura iryo ari ryo ryose cyangwa kurikwirakwiza byaba bishingiye ku bwoko, ku muryango cyangwa ku gisekuru, ku nzu, ku ibara ry'umubiri, ku gitsina, ku karere, ku byiciro by'ubukungu, ku idini cyangwa ukwemera, ku bitekerezo, ku mutungo, ku itandukaniro ry'umuco, ku rurimi, ku bukungu, ku bumuga bw'umubiri cyangwa ubwo mu mutwe no ku rindi vangura iryo ari ryo ryose, birabujijwe kandi bihanwa n'amategeko".

[13] Ingingo isabirwa gukurwaho ni Ingingo ya 1, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzura Itegeko N°25/2005 rigena imitunganyirize y'isoresha aho ivuga iti "[.....] Umusorekwa ntiyemerewe gutanga, ku rwego urwo ari rwo rwose rw'ubujurire, izindi nyandiko cyangwa ibitabo atagaragaje mu gihe cy'igenzura". Iyi ngingo yahinduye kandi yuzuzura ingingo ya 20 y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, iri mu gice cy'iryo tegeko kirebana n'igenzura n'iperereza.

[14] Kugira ngo ikibazo kiri muri uru rubanza gisubizwe mu buryo busobanutse, ni ngombwa gusobanura ibikubiye muri izi ngingo ebyeri z'Itegeko Nshinga, n'icyo zishatse kuvuga ku birebana n'uburenganzira bwo:

- (i) Kureshya imbere y'amategeko (equality before the law);
- (ii) Kudakorerwa ivangura (non-discrimination).

[15] Izi ngingo zombi zifitanye isano ku buryo gusobanura icyo zishatse kuvuga uzitandukanyije, bigoye. Ingingo ya 15 ivuga ko abantu bose bashyamba imbere y'amategeko kandi bakarengerwa n'amategeko mu buryo bumwe. Ni ukuvuga ko hatagomba kubaho

ivangura rituma abantu batangerwa mu buryo bumwe cyangwa kutagira uburenganzira aho bakabugize. Naho ingingo ya 16 ikomerezaho ivuga uburyo gutandukanya abantu bifatwa nk'ivangura kandi ko bitemewe n'Itegeko Nshinga. Izi ngingo zombi zafatwa nk'izikubiyemo ihame rimwe ririmo uduce tubiri dufitanye isano.

[16] Nkuko byavuzwe n'akanama kagenzura iyubahirizwa ry'uburenganzira bwa muntu k'Umuryango w'Abibumbye (United Nations Human Rights Committee): "Non-discrimination, together with equality before the law and equal protection of the law without discrimination, constitute a basic and general principle relating to the protection of human rights¹". Tugenekereje, ibi bishatse kuvuga ko "kudakorera ivangura, kureshya imbere y'amategeko no kurengerwa n'amategeko mu buryo bumwe nta vangura, bigize ihame rimwe shingiro kandi rusange ryerekeye kurinda no kurengera uburenganzira bwa muntu. Iyi sano iri hagati y'ingingo ya 15 n'ya 16 z'Itegeko Nshinga niyo ituma mu bihugu bimwe amahame azirimo ahurizwa hamwe mu ngingo imwe y'Itegeko Nshinga. Nko muri Canada aya mahame avugwa mu ngingo ya 15 ya Canadian Charter of Rights and Freedoms aho ivuga iti: "[e] very individual is equal before and under the law and has the right of equal protection and equal benefit of the law without discrimination and in particular without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability".

[17] Mu itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu, Universal Declaration of Human Rights, ryo mu mwaka wa 1948, mu ngingo yaryo ya 7 igira iti: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination". Naho ingingo ya 26 y'Amasezerano Mpuzamahanga ku Burenganzira Mbenezamubano n'ubwa Politiki (International Covenant on Civil and Political Rights, 1966) yo ikagira iti: "All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status". Ingingo z'Itegeko Nshinga ry'ibihugu bya Kenya² na South Africa³ nazo zanditswe muri ubwo buryo. Ni nayo mpamvu, Urukiko rushinzwe kurinda iyubahirizwa ry'Itegeko Nshinga (Constitutional Court) muri South Africa rwavuze ko gusuzuma ikibazo cyo kureshya imbere y'amategeko n'icyo kutavangura mu rubanza rumwe mu buryo bwihariye bidakwiye kandi bigoye kuko ihame ryo kureshya imbere y'amategeko no kutavangura ari ihame rimwe rigizwe n'uduce duhujwe⁴. No muri uru rubanza ibyo bibazo byombi biri busuzumirwe hamwe, hasubizwa iki kibazo: kureshya imbere y'amategeko no kurengerwa mu buryo bumwe nta vangura bivuze iki?

[18] Kureshya imbere y'amategeko no kutavangura ntibivuze ko gutandukanya abantu ubwabyo mu bihe byose ari ivangura. Gutandukanya abantu cyangwa ibyiciro by'abantu bishobora kuba ngombwa bitewe n'ikigambiriwe, hari impamvu zumvikana zishingiye ku ntego ifite ireme (legitimate or rational purpose). Urugero ni uko Leta ishobora kugira ibyo

¹ Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HRI/GEN/1/Rev.1 at 26 (1994).

²The Constitution of Kenya 2010, Article 27 agace ka 1, 4 n'aka 5.

³The Constitution of the Republic of South Africa, 1996, Article 9, para.1 and 3.

⁴ "It may be neither desirable nor feasible to divide the various subsections or descriptions into watertight compartments." Prinsloo Van der Linde 1997(3) SA 1012 CC para.22.

igenera ibyiciro by'abantu batishoboye cyangwa bafite intege nke nk'abana, ababana n'ubumuga, abasigajwe inyuma n'amateka n'abandi, ntibigenere abandi cyangwa igafatira ibyiciro bimwe nk'abagore ingamba zigamije kubateza imbere (affirmative action). Ibyo ntibifatwa nk'ivangura, ahubwo ni ugutandukanya abantu cyangwa kubashyira mu byiciro ku mpamvu zumvikana (legitimate differentiation). Ibi kandi byanavuzwe n'Akanama k'Umuryango w'Abibumbye muri aya magambo: "The right to equality before the law and equal protection of the law without any discrimination, does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of Article 26⁵. Tugenekereje mu kinyarwanda bishatse kuvuga ko: Uburenganzira bwo kureshya imbere y'amategeko no kurengerwa n'amategeko mu buryo bungana nta vangura, ntibivuze ko gufata abantu mu buryo butandukanye buri gihe biba ari ivangura. Gutandukanya bishingiye ku mpamvu zumvikana kandi zisobanutse ntabwo ari ivangura ribujijwe n'ingingo ya 26 y'Amasezerano Mpuzamahanga k'Uburenganzira Mbenezamubano n'ubwa Politiki.

[19] Mu gutanga inama ku mushinga w'ivugurura ry'Itegeko Nshinga rya Costa Rica, Urukiko rugenzura iyubahirizwa ry'uburenganzira bwa muntu mu bihugu bya America yo hagati n'iyepfo (Inter American Court of Human Rights) rwasobanuye neza icyo kureshya imbere y'amategeko no kutavangura bivuze. Rwagize ruti: "Precisely because equality and nondiscrimination are inherent in the idea of the oneness in dignity and worth of all human beings, it follows that not all differences in legal treatment are discriminatory as such, for not all differences in legal treatment are in themselves offensive to human dignity [.....]. There may well exist certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate the principle of justice. They may in fact be instrumental in achieving justice or in protecting those who find themselves in a weak legal position. Accordingly, no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows, that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of human kind".⁶

[20] Mu rubanza Firma A. Racke v Hauptzollamt Mainz, Urukiko rw'Umuryango w'Ubumwe bw'ibihugu by'Uburayi (Court of Justice of the European Union) rwasobanuye ko ivangura ari ugufata ibintu cyangwa abantu bari mu cyiciro kimwe mu buryo butandukanye ndetse n'abari mu byiciro bitandukanye bagafatwa kimwe. Rwagize ruti "[.....] discrimination consists solely in the application of different rules to comparable

⁵ Communication N°172/1984 S.W.M. Broeks v The Netherlands (views adopted on 9 April 1987) in UN Doc. GOAR, A/42/40 P.150, para 13.

⁶ Ugenekereje mu Kinyarwanda bishatse kuvuga: "Ihame ryo kureshya imbere y'amategeko no kutavangura bishingiye ku bumwe bw'inyoko muntu bigendanye n'agaciro k'abantu bose. Ibyo bituma gutandukanya abantu ubwabyo bitafatwa nk'ivangura kuko ntabwo uburyo bwo gutandukanya abantu bugira ingaruka ku gaciro kabo nk'abantu. Hari gutandukanya abantu mu mategeko bitanyuranye n'ihame ry'ubutabera. Ahubwo kudafata abantu kimwe bishobora kuba uburyo bwo gutanga ubutabera cyane cyane ku banyantege nke. Ni ukuvuga ko nta vangura ribaho iyo kudafata abantu kimwe bifite impamvu yumvikana kandi itarenganya abantu. Ushyize mu gaciro uburyo bwo gutandukanya abantu bukwiye kuba bwumvikana ugereranije n'icyari kigambiriwe cyangwa intego igomba kugeraho". I-A Court H.R, Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica, Advice Opinion OC 4/84 of Jan 19, 1984, series A N°4, p.104-106 paras 56-57.

situations or in the application of the same rule to differing situations [...]”⁷. Biragaragara rero ko, kudafata kimwe abantu bari mu byiciro bitandukanye atari ivangura, ku rundi ruhande, abantu bari mu byiciro bitandukanye baramutse bafashwe kimwe byo bishobora kuba ivangura.

[21] Ingingo ya 1, igika cya 5, y’Itegeko N°74/2008 ryo kuwa 31/12/2008 yavuzwe haruguru, niyo urega ashingiraho avuga ko inyuranije n’Itegeko Nshinga kuko avuga ko ivangura hagati y’umuburanyi w’umusoreshwa n’umuburanyi mu zindi manza ikanatuma abantu batareshya imbere y’amategeko kuko umuburanyi mu manza zitari iz’imisoro we yemerewe gutanga ibimenyetso aho urubanza rwaba rugeze hose. Ese ibi byaba ari ukutareshyesha abantu imbere ya amategeko no kuvangura?

[22] Nkuko bigaragara, Itegeko Nshinga mu ngingo yaryo ya 16 rigaragaza urutonde rw’impamvu ivangura rishobora gushingiraho. Muri rusange ivangura ni ugutandukanya abantu hagamijwe kuvutsa amahirwe bamwe no gutonesha abandi bigakorwa bishingiye ku mpamvu zitumvikana. Ku birebana n’uru rubanza, hari icyiciro cy’ababuranyi b’abasoreshwa, umusoresha ndetse n’ababuranyi mu zindi manza. Muri ibi byiciro, nta na kimwe gishingiye kuri imwe mu mpamvu ivangura rishobora gushingiraho nkuko zivugwa mu Itegeko Nshinga.

[23] Iyo gutandukanya abantu bishingiye ku mpamvu ivugwa mu ngingo ya 16 y’Itegeko Nshinga, bifatwa nk’ivangura keretse hagaragajwe impamvu yumvikana ituma haba gufata abantu mu buryo butandukanye hashingiwe kuri iyo mpamvu ivugwa mu ngingo ya 16. Nyamara kandi ingingo ya 16 igaragaza urutonde rw’icyo ivangura rishobora gushingiraho ariko ikongeraho amagambo “no ku rindi vangura iryo ariryo ryose”. Niyo mpamvu hagomba gusuzumwa itegeko cyangwa igikorwa icyo aricyo cyose bivugwa ko binyuranije n’iyi ngingo kugira ngo bigaragare niba koko hari ivangura cyangwa ritariho. Nkuko byasobanuwe mu bika bibanziriza iki, iyo habaye gutandukanya abantu bidashingiye kuri imwe mu mpamvu zari ku rutonde ruri mu ngingo ya 16, harebwa niba impamvu yashingiweho yumvikana, ifite icyo igamijwe gifitiye abantu muri rusange cyangwa icyiciro runaka akamaro.

[24] Nibyo koko mu manza zisanzwe, umuburanyi yemerewe gutanga ibimenyetso bishya mu rwego rw’ubujurire atatanze mu rwego rwa mbere. Ingingo ya 168 y’Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsu igika cya 3 ivuga iti: “[.....] Ntibubujijwe ariko mu rwego rw’ubujurire gutanga ingingo nshya zo kuburana cyangwa ibimenyetso bishya bitaburanishijwe mu rwego rwa mbere”. Hagomba rero gusuzumwa niba itegeko ridafata kimwe abantu bari mu cyiciro kimwe no mu bihe bimwe, n’impamvu y’ingingo ya 1 agace ka 5, y’Itegeko N°74/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y’isoreshwa ibuzwa umusoreshwa gutanga ibimenyetso mu rwego rw’ubujurire.

[25] Kubuza umuburanyi w’umusoreshwa gutanga ibimenyetso ku rwego rw’ubujurire atarabitanze igihe cy’igenzura bishobora kumvikana nko kumuvutsa uburenganzira abandi baburanyi bagenerwa, binyuranije n’ihame ryo gufatwa kimwe imbere y’amategeko no kutavangura. Mu rubanza rwa Backus v. Fort St. Union Depot Company⁸ rwo muri Leta Zunze Ubumwe za America, hasuzumwe itegeko ryabuzaga nyir’inzu kurega umukodesha asaba indishyi ku byangijwe, igihe nyir’inzu yakoresheje nabi ingwate y’ibizangizwa

⁷ CJCE, aff. 283/83, 13 novembre 1984, Racke/Hauptzollamt Mainz, Rec., 1984, p.3791; CJCE, aff. 106/83, 13décembre 1984, Société Sermide, Rec., p.4209; CEDH, 6 Avril 2000, Thlimennos c. Grèce, N°34369/97.

⁸Backus v. Fort St. Union Depot Co., 169 U.S. 557, 18 S. Ct. 445, 42 L. Ed. 853 (1898).

(security deposit). Urukiko rw'Ikirenga rw'icyo gihugu rwanzuye ruvuga ko itegeko ryemerera umuntu bumwe mu burenganzira mu migendekere y'urubanza mu rukiko ariko rikabibuza abandi bari mu bihe bimwe, rishobora gufatwa nk'irivangura kandi ritubahiriza ihame ryo kureshya no kurengerwa imbere y'amategeko binyuranije n'Itegeko Nshinga.

[26] Nyamara muri uru rubanza, bigaragara ko ababuranyi b'abasoreshwa batari mu bihe bimwe n'abandi baburanyi. Abasoreshwa ni icyiciro cy'abantu bihariye bafite ibyo basabwa kugira ngo igikorwa cy'ingenzi ku gihugu gikorwe neza. Iyaba abasoreshwa bamwe babuzwaga gutanga ibimenyetso ku rwego rw'ubujurire abandi bakabyemererwa, byaba ari ugusumbanisha ababuranyi bari mu cyiciro kimwe mu bihe bimwe. Impamvu yo kubuza abasoreshwa muri rusange gutanga ibimenyetso mu bujurire batatanze mu gihe cy'igenzura, ni ukubatera umwete (incentive) wo gutanga ibyo bimenyetso ku gihe bigafasha umusoresha kurangiza inshingano ye yo kugenzura inisoro neza. Umusoresha afite uburenganzira bwo gutanga ibimenyetso byose mu gihe cy'igenzura kugira ngo abarirwe neza imisoro agomba gutanga. Ni nawe ufite ibimenyetso byose bishobora gufasha kumenya ukuri ku misoro agomba gutanga. Ibi bitandukanye n'umuburanyi usanzwe ushobora gukenera ibimenyetso bifitwe n'abandi adafite uburyo bwo kubigeraho igihe abishakiye. Uru rukiko rwumva ko ingingo y'itegeko isabirwa gukurwaho ifite impamvu yumvikana kandi ifitiye akamaro rubanda bikaba bitafatwa ko ivangura.

[27] Ariko kandi, itegeko rishobora kuba rifite impamvu n'itego byumvikana ariko rikaba rikoresha uburyo burengera ugereranije n'itego igomba kugerwaho (measure not proportional to the purpose/ objective to be achieved). Ibi ninabyo byavuzwe n'Urukiko rw'Ibihugu byunze Ubumwe bw'Uburayi rugenzura iyubahirizwa ry'uburenganzira bwa muntu (European Court of Human Rights) muri aya magambo: "[....] on this question, the Court holds that the principle of equality of treatment is violated if a distinction has no objective and reasonable justification. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised".⁹

[28] Muri uru rubanza, hagomba gusuzumwa niba uburyo bwakoreshejwe kugira ngo umusoresha atange inyandiko zose zikenewe ku gihe, ni ukuvuga kubuza umusoresha kuzana ibimenyetso ku rwego rw'ubujurire atarabitanze mu gihe cy'igenzura, byafatwa nko kurengeera mu kugena ibyari bikenewe kugira ngo iyo ntego igerweho. Nyamara kandi, mu gusuzuma no gufata icyemezo niba ibyateganijwe mu itegeko kugira ngo itego yavuzwe igerweho cyangwa niba hari ubundi buryo butari kubangamira abasoreshwa, urukiko rugomba kwirinda kuvogera inshingano z'abashinzwe gushyiraho politiki y'igihugu no kuyishyira mu bikorwa, kimwe n'inshingano z'umushingamategeko.

[29] Urukiko ntirwavugaga ko itegeko rinyuranyije n'Itegeko Nshinga rushingiye gusa ku kuba mu myumvire yarwo icyo itegeko ryari rigamijwe cyagerwaho hakoreshejwe ubundi buryo. Umuburanyi unenga itegeko agomba kugaragaza ko inzira umushingamategeko yahisemo itumvikana, idasobanutse cyangwa se ko, ushyize mu gaciro, iyo nzira ntaho

⁹Eur.Court HR, Case "relating to certain aspects of the laws on the use of language in education in Belgium" judgment of 23 July 1968, series A, N° 6.p.31.para 10. Tugenekereje mu Kinyarwanda bivuze ngo ihame ryogufata abantu kimwe riba ryishwe iyo kudafata abantu kimwe bidafite impamvu yumvikana nta n'igisobanuro gifatika. Ikindi ni uko gutadukanya abantu mu buryo uburenganzira bwabo bemererwa bwubahirizwa ntibigombakugaragara gusa ko hari impamvu yumvikana ahubwo ihame riri mu ngingo ya 14 y'amasezerano riba ryishwe iyo ushyize mu gaciro (proportionality), bigaragaye ko uburyo bwakoreshejwe ntaho buhariye n'icyari kigamijwe).

ihuriye n'itego itegeko ryashyiriweho. Ibi bijyanye n'ihame ry'uko inzego z'ubutegetsi bwa Leta zitandukanye kandi ko zigenga zikanubahana (separation of powers)¹⁰. Ibi byashimangiwe mu rubanza rwa S v Lawrence¹¹ rwo mu rukiko rushinzwe iyubahirizwa ry'Itegeko Nshinga rya South Africa aho rwashyigikiye ibyanditswe n'umuhanga Professor Hogg aho avuga ko urukiko rufite ubwisanzure mu gufata ibyemezo bireba ibibazo biburanwaho ariko ko rutakwisanzura mu gufata ibyemezo bireba ibishingirwaho n'umushingamategeko mu gushyiraho amategeko. icyo urukiko rwakora ni ukwemeza ko hari isano igaragara hagati y'itegeko n'itego umushingamategeko yashakaga kugeraho (rational connection), ni ukuvuga ko impamvu zashingiweho zumvikana kandi ko zifatika cyangwa ko ibyo Atari byo. Akomeza avuga ko bitaba aribyo ko muri demokarasi, inkiko zashyira iruhande ubushishozi bw'umushingamategeko zikabusimbuza ubwazo".¹²

[30] Muri rusange, itangwa ry'ibimenyetso mu manza rigengwa n'Itegeko N°15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ariko mu buryo bwihariye mu manza z'imisiro rikagenwa n'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha cyane cyane mu ngingo yaryo ya mbere. icyo iyi ngingo igamije, si ukuvangura abasoreshwa baburana n'abandi baburanyi hagamijwe kubavutsa amahirwe yo kwiregura no gutanga ibimenyetso, ahubwo igamije gushyiraho uburyo bwihariye umusoreshwa atangamo ibimenyetso hashingiwe cyane cyane ku nshingano ahabwa n'itegeko zo kubika ibitabo n'izindi nyandiko. Umusoreshwa afite uburenganzira bwo gutanga ibimenyetso mu buryo itegeko ryagennye butandukanye n'abandi baburanyi.

[31] Itegeko riha umusoreshwa inshingano zo kubika no gutunga inyandiko zose zirebana n'ubucuruzi bwe, akabigaragaza mu gihe cy'igenzura. Nyuma y'igenzura yemerewe gushyikiriza ubuyobozi bw'imisiro ubundi buhama n'ibindi bimenyetso mu gihe cy'iminsi 30 kuva akibona inyandiko ikosora kugira ngo niba harabayeho amakosa akosorwe¹³. Uretse n'ibyo, yemerewe kubitanga ku rwego rw'ubujurire igihe agaragaje impamvu yumvikana yatumye atabitanga mu gihe cy'igenzura¹⁴. Ni ukuvuga ko ibimenyetso bitemewe ari ibyo umusoreshwa yashoboraga gutanga igihe cy'igenzura ntabitange kubera uburiganya, gushaka

¹⁰Ingingo ya 61 y'Itegeko Nshinga rya Repubulika y'u Rwanda, 2015.

¹¹S v Lawrence 1997 (4) SA 1176 para.44-45.

¹² Hogg "Proof of facts in Constitutional Cases (1976) 26 University of Toronto Law Journal 386 at 396-7" "While a court must reach a definite conclusion on the adjudicative facts which are relevant to the disposition of litigation, the court need not be so definite in respect of legislative facts in constitutional cases. The most that the court can ask in respect of legislative facts is whether there is a rational basis for the legislative judgment that the facts exist. The rational-basis test involves restraint on the part of the court in finding legislative facts. Restraint is often compelled by the nature of the issue: for example, an issue of economics which is disputed by professional economists can hardly be definitively resolved by a court staffed by lawyers. The most that can realistically be expected of a court is a finding that there is, or is not, a rational basis for a particular position on the disputed issue. The more important reason for restraint, however, is related to the respective roles of court and legislature. A legislature acts not merely on the basis of findings of fact, but upon its judgment as to the public perceptions of a situation and its judgments as to the appropriate policy to meet the situation. These judgments are political... It is not for the court to disturb political judgments, much less to substitute the opinions of experts. In a democracy it would be a serious distortion of the political process if appointed officials (the judges) could veto the policies of elected officials."

¹³Ingingo za 27 na 29 z'Itegeko N°25/2005 ziha umusoreshwa uburenganzira bwo gushyikiriza ubuyobozi bw'imisiro ubundi buhama n'ibindi bimenyetso mu gihe cy'iminsi 30 kuva akibona inyandiko ikosora bigaragazako isoresha ryakozwe nabi kugira ngo byongere bisuzumwe kugira ngo niba harimo amakosa bibe byakosorwa.

¹⁴Agace ka nyuma k'Ingingo isabirwa gukurwaho kavuga ngo: "Ibiteganyjwe mu gika kibanziriza ikintibukurikizwa, iyo umusoreshwa abashije gutanga impamvu zifatika zatumye atagaragaza ibimenyetso mu gihe cy'igenzura".

kujijisha cyangwa uburangare bukabije adashobora gusobanura (not justifiable). Umusoresha ufite ubushake bwo gutanga imisoro ye uko bikwiye kandi ku gihe ntacyo yangirizwa n'ingingo isabirwa gukurwaho kuko ibimenyetso bikenewe abimenyeshwa mbere y'igenzura yaba abifite akabitanga mu gihe cy'igenzura, ibyo adashoboye kubona icyo gihe akazabitanga aho abiboneye ariko ashoboye gusobanura impamvu bitabonetse mbere.

[32] Kuba ibyo atagaragaje mu gihe cy'igenzura atemerewe kubitanga nk'ikimenyetso mu gihe yajuririyeye ibyagaragajwe n'igenzura, ni ingaruka zuko aba atujuje inshingano yo kugeza ku buyobozi bw'imisoro mu gihe cy'igenzura, ibitabo n'inyandiko bivugwa mu ngingo ya 12, iya 13 n'ya 15 z'Itegeko N°25/2005 ryo kuwa 04/12/2005. Mu gihe umusoresha yaba yemerewe gutanga ibitabo n'inyandiko bivugwa muri iki gika igihe icyo aricyo cyose nyuma y'igenzura, kugaragaza ibitabo n'inyandiko mu gihe cy'igenzura ntibyaba bikiri inshingano, yabitanga cyangwa se agahitamo kuzabitanga mu bujirire kandi ibyo byatuma igenzura ry'imisoro ritagenda neza.

[33] Nubwo Akagera Business Group mu myanzuro yayo itashingiyeye ku kuba hari ubusumbane mu bushobozi bw'abaturanyi (equality of arms), yabikomojeho mu miburanire imbere y'Urukiko. Yavuze ko ari ikibazo ko umusoresha atemerewe gutanga ibimenyetso ku rwego rw'ubujirire atarabitanze mu igenzura ariko umusoresha we akaba abyemerewe. Mu gusubiza, Intumwa ya Leta yo ivuga ko umusoresha n'umusoresha batari mu cyiciro n'ibihe bimwe, ko bafite inshingano zitandukanye, ko rero kudafatwa kimwe bitaba kutareshya imbere y'amategeko cyangwa ivangura.

[34] Uburinganire mu bushobozi bw'abaturanyi bwo gusobanura imyanzuro yabo no gutanga ibimenyetso ntibiteganywa mu Itegeko Nshinga ry'u Rwanda, bikaba atari uburenganzira bwihariye. Ariko tugendeye ku mahame mpuzamahanga n'inyandiko z'akanama gashinzwe iyubahirizwa ry'uburenganzira bwa muntu (UNHRC), dusanga uburinganire bw'abaturanyi mu bushobozi bwo gusobanura imiburanire yabo imbere y'inkiko bifatwa nk'uruhande rumwe/cyangwa agace kamwe k'uburenganzira bwo gufatwa kimwe imbere y'inkiko nkuko biteganywa mu ngingo ya 14 y'Amasezerano Mpuzamahanga k'Uburenganzira Mbonezamubano n'ubwa Politiki (ICCPR). Iyo ngingo iteganya ko abantu bose barareshya imbere y'inkiko. Mu guhuza iyi ngingo n'ubushobozi bwo kwisobanura imbere y'inkiko, akanama kavuze ko abaturanyi bafite uburenganzira bungana mu migendekere y'urubanza keretse iyo kutabemerera ubwo burenganzira bigenwa n'itegeko kandi bikaba bisobanutse hashingiye ku mpamvu zumvikana, zitavutsa amahirwe umuburanyi cyangwa ngo zimurenganye¹⁵.

[35] Mu rubanza rwa *Dudko v Australia*, akanama (UNHRC) kavuze ngo: "It is for the State party to show that any procedural inequality was based on reasonable and objective grounds not entailing actual disadvantage or other unfairness to the author [...]"¹⁶. Mu Kinyarwanda, byavugwa ko Leta igomba kugaragaza ko kudatanga uburenganzira bungana mu migendekere y'urubanza bigomba gushingira ku mpamvu zumvikana, kandi zitavutsa umuburanyi amahirwe cyangwa ngo zimurenganye mu bundi buryo.

[36] Kuri iki kibazo cy'ubusumbane mu bushobozi imbere y'inkiko no gutanga ibimenyetso, Urukiko rusanga imiterere y'igenzura n'itunganya ry'imisoro no kuba

¹⁵United Nations Human Rights Committee, General Comment N°32, Article 14, Right to equality before Courts and tribunals and fair trial, UN.Doc.CCPR//G/32/Aug.23,2007 para 13. "This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant".

¹⁶UNHR, *Dudko v Australia*, Comm. N°1347/2005, UN.Doc.CCPR//90/D/1347/2005 (Aug.29.2007 para 7.4.)

umusoreshwa afite inshingano yo gutunga no kubika ibitabo n'izindi nyandiko, akaba ari nawe wenyine uba afite amakuru ya ngombwa ashobora kuyatanga cyangwa akayimana, bituma umusoresha ahabwa uburenganzira bwo kuba yatanga ibimenyetso yabonye nyuma nubwo umusoreshwa we atabyemerewe. Ibi bikaba bitafatwa nk'ubusumbane mu bushobozi bwo gusobanura imbere y'urukiko.

[37] Hashingiwe ku byasobanuwe hejuru, Urukiko rurasanga ingingo ya mbere, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha, nubwo idafata ababuranyi b'abasoreshwa mu buryo bumwe nk'ababuranyi mu zindi manza, ntigaragaramo ubusumbane imbere y'amategeko no kutarengerwa n'amategeko mu buryo bumwe, ndetse ikaba itanagaragaramo ivangura iryo ariryo ryose. Impamvu uwareze ashingiraho avuga ko hari ivangura ntivugwa mu mpamvu zishobora gutera ivangura mu ngingo ya 16 y'Itegeko Nshinga, kandi ikaba yumvikana, ntishobora kandi gufatwa nkaho ntaho ihuriye n'itego yo gutera umwete abasoreshwa gufatanywa n'umusoresha kuzuzwa neza inshingano ahabwa n'amategeko. Ababuranyi b'abasoreshwa, bitewe n'umwihariko wabo, itegeko ribafata ku buryo butandukanye n'abandi baburanyi hashingiwe ku mpamvu zumvikana kandi zitagamije kubavutsa uburenganzira n'andi mahirwe bahabwa n'itegeko. Byongeye kandi, kuba batemerewe gutanga mu bujuriye ibimenyetso batatanze mu gihe cy'igenzura, umusoresha we akaba abyemerewe, ntibyafatwa nk'ubusumbane mu bushobozi bwo gusobanura imbere y'inkiko, ahubwo ni uko abasoreshwa aribo bonyine baba bafite ibyo bimenyetso bakaba bashobora kubitanga igihe bikenewe nkuko byasobanuwe. Muri make, ingingo y'itegeko isabirwa kuvanwaho, ntinyuranyije n'ingingo za 15 na 16 z'Itegeko Nshinga kuko idasumbanisha abantu imbere y'amategeko kandi ikaba itaragaza ivangura iryo ari ryo ryose.

III. ICYEMEZO CY'URUKIKO

[38] Urukiko rw'Ikirenga rwemeye kwakira ikirego rwashyikirijwe n'AKAGERA BUSINESS GROUP gisaba gukuraho ingingo ya mbere, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha kuko yaba inyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 nkuko ryavugururwe muri 2015 mu ngingo yaryo ya 15 n'ya 16;

[39] Rwemeje ko nta shingiro icyo kirego gifite;

[40] Rwemeje ko ingingo ya mbere, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuzwa Itegeko N°25/2005 rigena imitunganyirize y'isoresha itanyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 nk'uko ryavugururwe muri 2015 mu ngingo yaryo ya 15 n'ya 16;

[41] Ruvuze ko amagarama yatanze n'AKAGERA BUSINESS GROUP ahwanywe n'ibyakoze mu rubanza.