MUHIRWA ET AL v. NZEYIMANA

[Rwanda URUKIKO RW'IKIRENGA – RPAA0021/16/CS-RPAA0002/2016/CS (Kanyange, P.J., Nyirandabaruta na Gatete, J.) 12 Gicurasi 2017]

Amategeko yerekeye imiburanishirize y'imanza Nshinjabyaha – Kurega utisunze ubushinjacyaha – Ububasha bw'Urukiko rw'Ikirenga ku bujurire bwa kabiri mu manza nshinjabyaha – Igihano cyonyine nicyo gishingirwaho mu kugena ububasha kabone n'ubwo abareze baba batarisunze Ubushinjacyaha – Itegeko Ngenga N^{o}03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, Ingingo ya 28(3).

Incamake y'ikibazo: Urubanza rwatangiriye mu rukiko rw'ibanze rwa Rusororo abarega barega Nzeyimana Bertin na Mukayisenga Cecile batisunze ubushinjacyaha, ibyaha by'ubuhemu, gukora no gukoresha inyandiko mpimbano no guhabwa kubw'uburiganya amafaranga cyangwa ibifite agaciro kayo. Urwo rukiko rwasanze bimwe mu byaha abaregwaga bari bakurikiranywe bitari mu bubasha bwarwo rwohereza urubanza mu Rukiko Rwisumbuye rwa Gasabo, narwo rufata icyemezo cyo kuvana mu rubanza Mukayisenga Cecile hashingiwe ku kuba atarigeze abazwa ku byaha yari akurikiranweho naho Nzeyimana Bertin rumuhamya icyaha cy'ubuhemu nicyo kwihesha ibyemezo bitangwa n'inzego zabugenewe rumuhanisha igifungo cy'umwaka umwe, ihazabu ya 500.000Frw no gusubiza abarega amafaranga y'amagarama y'urubanza.

Impande zombi zajuririye urwo rubanza mu Rukiko Rukuru, maze rwemeza ko Nzeyimana Bertin adahamwa n'ibyaha akurikiranyweho ndetse ko ubujurire bw'abaregera indishyi budafite ishingiro. Aba bajuriye mu Rukiko rw'Ikirenga aho urukiko rwabanje gusuzuma niba ubujurire bwabo buri mu bubasha bwarwo. Kuriki kibazo, abajuriye bagaragajeko ububasha bw'urukiko bushingiye ku kimenyetso kigizwe n'amasezerano y'ubugure hagati ya Nzeyimana na Mukayaramba verediyana cyashingiweho mu icibwa ry'urubanza kandi cyaratanzwe nyuma y'iburanisha ndetse no ku gaciro k'amafaranga angana na 1.178.668.446. Uregwa mu bujurire we, yagaragazaga ko icyo kimenyetso cyaburanishijweho kikaba kigaragara muri dosiye ndetse banagishyikirijwe banagaragaza ko mu kugena ububasha bw'urukiko hatarebwa amafaranga asabwa n'ababuranyi ahubwo harebwa ayagenwe n'urukiko, bakavuga kandi ko mu manza nshinjabyaha igihano cyatanzwe aricyo kigenderwaho mu kugena ububasha bw'Urukiko rw'Ikirenga.

Ubushinjacyaha bwo bwagaragazagakokuba abajuriye baratanze ikirego batabwisunze, byakomeza muri uwo murongo, ko ariko mu nyungu z'ubutabera urubanza rutatandukanywa n'izindi manza nshinjabyaha n'ubwo ataribwo bwareze, hakibazwa niba ubujurire bwashingira ku ndishyi n' aho urukiko rwashingira mu kuzigena nta kirego nshinjabyaha gihari mu gihe icyo kirego cyakwakirwa.

Incamake y'icyemezo: Igihano nicyo cyonyine gishingirwaho mu kugena ububasha bw'Urukiko rw'Ikirenga ku bujurire bwa kabiri, kabone n'ubwo abareze baba batarisunze Ubushinjacyaha. Bityo rero, ubujurire bw'abarega ntiburi mu bubasha bw'Urukiko rw'Ikirenga.

Ubujurire ntiburi mu bubasha bw'Urukiko rw'Ikirenga
Amagarama y'urubanza aherereye ku bajuriye.

Amategeko yashingiweho:
Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28, igika cya 2(7º,8º,9º) n'igika cya 3.
Itegeko Ngenga Nº51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 164.
Itegeko Nº30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 187.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Muhorakeye Grâce na Muhirwa Alexandre bavuga ko bafatanyije na Nzeyimana Bertin n'umugore we Mukayisenga Cécile gushinga ishuri ryitwa Collège de l'Espoir de Gasogi, Nzeyimana Bertin aba "Représentant Légal" w'icyo kigo, ashinzwe gukurikirana imikorere yacyo ya buri munsi no kucyagura, ko ari muri urwo rwego yakoresheje amafaranga y'Ikigo akigurira ibibanza, ariko abyandika ku mazina ye bwite, hanyuma yubaka amacumbi y'abanyeshuri, nayo ayandika ku mazina y'umugore we Mukayisenga Cécile, ko byageze aho hubakwa n'inyubako mu izina ry'Ikigo mu rwego rwo kwagura ishuri ariko nazo araziyitirira kandi ko hari n'ubugenzuzi bwakozwe (audit) bugasanga hari amafaranga atagaragarizwa uburyo yakoreshejwe.

[2] Muhorakeye Grâce na Muhirwa Alexandre bareze Nzeyimana Bertin ubuhemu, gukora no gukoresha inyandiko mpimbano no guhabwa ku bw'uburiganya amafaranga cyangwa ibifite agaciro kayo. Nyuma yo gusangaibigize ibyaha bituzuye, Ubushinjacyaha bwashyinguye dosiye.

[3] Muhorakeye Grâce na Muhirwa Alexandre baregeye Urukiko rw'Ibanze rwa Rusororo batisunze Ubushinjacyaha, mu rubanza no RP0012/013/TB/RUS rwaciwe ku wa 22/03/2013, urwo Rukiko rusanga bimwe mu byaha abaregwa bakurikiranyweho bitari mu bubasha bwarwo, rwohereza urubanza mu Rukiko Rwisumbuye rwa Gasabo. Urwo Rukiko rwasanze Mukayisenga Cécile atarigeze abazwa ku byaha akurikiranyweho, rufata icyemezo cyo kumuvana mu rubanza.

[4] Ku birebana na Nzeyimana Bertin, Urukiko rwaciye urubanza RP0191/13/TGI/GSBO ku wa 19/06/2014, rwemeza ko ahamwa n'icyaha cy'ubuhemu n'icyo kwihesha ibyemezo bitangwa n'inzego zabugenewe, rumuhanisha igifungo cy'umwaka umwe (1) n'ihazabu ya 500.000Frw, akanasubiza Muhirwa na Muhorakeye amafaranga y'amagarama y'urubanza angana na 8.000Frw.

[5] Nzeyimana Bertin n'abareze batisunze Ubushinjacyaha bajuririye Urukiko Rukuru/Kigali, Nzeyimana ajurira avuga ko Urukiko Rwisumbuye rwirengagije ibisobanuro yaruhaye bigaragaza ko ibibanza bivugwa muri dosiye ari we n'umugore we babiguze nk'umutungo wabo bwite, naho Muhirwa Alexandre na Muhorakeye Grâce bajurira bavuga ko Nzeyimana Bertin yagabanyirijwe igihano mu buryo bunyuranyije n'amategeko, ko Urukiko rwashyikirijwe raporo y'igenzura (audit) igaragaza ko habuze 1.178.768.446Frw ariko ntirwagira icyo ruyivugaho, ko kandi hirengagijwe ko Nzeyimana Bertin akwiye

gusubiza ibikomoka ku byaha yahamijwe no guha abamurega ibyo batakaje ku manza yabashoyemo.

[6] Urwo Rukiko rwaciye urubanza RPA0488/14/HC/KIG-RPA0501/14/HC/KIG ku wa 22/12/2015, rwemeza ko ubujurire bwa Nzeyimana Bertin bufite ishingiro, ko ibyaha akurikiranyweho bitamuhama, rwemeza kandi ko ubujurire bw'abaregera indishyi nta shingiro bufite.

[7] Muhirwa Alexandre na Muhoracyeye Grâce bajuririye mu Rukiko rw'Ikirenga, urubanza ruburanishwa mu ruhame ku wa 03/04/2017, Muhirwa na Muhorakeye baburanirwa na Me Kazungu Jean Bosco, Me Bayingana Janvier na Me Gasominari Jean Baptiste, Nzeyimana Bertin aburanirwa na Me Katushabe Mary, Me Shema Gakuba Charles na Me Ntaganda Kabare Festo, Ubushinjacyaha buhagarariwe na Harindintwari Côme, hasuzumwa inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga yabyukijwe na Nzeyimana Bertin.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

Kumenya niba ubujurire bwa Muhirwa Alexandre na Muhorakeye Grâce butari mu bubasha bw'Urukiko rw'Ikirenga.

[8] Ababuranira Nzeyimana Bertin bavuga ko Muhirwa na Muhorakeye bashingira ububasha bw'Urukiko rw'Ikirenga ku kimenyetso kigizwe n'amasezerano y'ubugure bw'ikibanza yabaye hagati ya Mukayaramba Verediyana na Nzeyimana Bertin, ngo kuko yashingiweho kandi batayazikuko ataburanyweho, nyamara icyo kimenyetso cyaraburanishijweho kandi kikaba kigaragara kuri cote 38 ya dosiye, kikaba kandi kiri mu bimenyetso byashikirijwe abo baburana bikozwe n'umuhesha w'inkiko, kinashyikirizwa Me Rutabingwa Athanase wababuraniraga bikozwe na Me Shema Gakuba Charles.

[9] Bavuga kandi ko ikibanza Nzeyimana yaguze na Mukayaramba gifite Nº309, ntaho gihuriye n'ibibanza biburanwa bifite Nº725 na 301, ko kandi kitashingiweho mu icibwa ry'urubanza kuko Nzeyimana yakiburanishije agamije gusa kugaragaza uko yabonye imitungo ye iri i Gasogi.

[10] Na none kandi, ngo nta ndishyi zingana na 50.000.000Frw Urukiko rwagennye, ko kandi mu kugena ububasha bw'Urukiko hatarebwa amafaranga asabwa n'ababuranyi ahubwo harebwa ayagenwe n'Urukiko. Bavuga kandi ko mu manza nshinjabyaha igihano cyatanzwe ari cyo kigenderwaho mu kugena ububasha bw'Urukiko rw'Ikirenga, nyamara Nzeyimana Bertin akaba yaragizwe umwere, kandi ikirego cy'indishyi kiba gishamikiye ku cy'inshinjabyaha. Basobanura ko kuba abatanze ikirego batarisunze Ubushinjacyaha, bitavanaho ko urubanza ari urw'inshinjabyaha, kandi indishyi zikaba zitangwa mu gihe uregwa yahamwe n'icyaha, ko rero atari zo zikwiye kurebwa mu kugena Ububasha bw'uru Rukiko ahubwo hakubahirizwa icyo Umushingamategeko yashatse.

[11] Basanga kandi urubanza RPAA0001/15/CS abo baburana basaba ko rwashingirwaho, rutandukanye n'uruburanwa kuko rwarebanaga n'ubujurire ku ndishyi aho uwaregwaga atari yakurikiranywe kubera ko ikirego cyashaje, mu gihe muri uru uregwa yagizwe umwere, akaba ataregwa indishyi.

[12] Ababuranira Muhirwa na Muhorakeye bavuga ko ububasha bw'Urukiko rw'Ikirenga bushingiye ku ngingo ya 28 y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, kuko hari ikimenyetso kigizwe n'amasezerano y'ubugure yabaye hagati ya Nzeyimana na Mukayaramba Verediyana, cyashingiweho mu icibwa ry'urubanza rujuririrwa ku rupapuro rwa 4, igika cya 6 kandi cyaratanzwe nyuma y'iburanisha kuko bakibonye mu rubanza, ko kandi kuba uwo baburana avuga ko afite inyandiko igaragaza ko abo baburana bacyakiriye, bidahagije kuko nta "invetaire" yakozwe igaragaza ibikubiye mu gitabo kirimo icyo kimenyetso, kandi Nzeyimana akaba ariwe ufite inshingano yo kugaragaza ko ayo masezerano yari muri icyo gitabo.

[13] Bavuga kandi ko ububasha bw'Urukiko rw'Ikirenga bunashingiye ku gace ka 7, igika cya 2, cy'ingingo ya 28 y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru kuko agaciro k'amafaranga yarigishijwe kangana na 1.178.668.446Frw ndetse n'agaciro k'amafaranga y'ibyumba by'amashuri kakaba karenga 50.000.000Frw, ko kandi kuba nta mpaka zagiwe ku gaciro k'ikiburanwa bigaragaza ko ababuranyi bakemeraga, kakaba gahuye n'indishyi zakwa mu rubanza, bikaba bihuye n'ibyemejwe mu rubanza RPAA0001/15/CS rwaciwe n'uru Rukiko ku wa 14/10/2015, kuko rwemeje ko mu gihe agaciro k'indishyi kari mu bubasha bwarwo, ubujurire bukwiye kwakirwa kabone niyo uregwa yaba yarahanishijwe igifungo kiri munsi y'imyaka icumi.

[14] Basanga kandi kuba ababuranira Nzeyimana Bertin bavuga ko nta ndishyi zigera kuri 50.000.000Frw zagenwe n'Urukiko Rukuru, bitiranya ibintu kuko uru rubanza rushingiye ku kirego cyatanzwe hatisunzwe Ubushinjacyaha (citation directe), agaciko k'amafaranga cyangwa k'imitungo kakaba katarigeze kagibwaho impaka (contestation) kuko byari gukorwa na "contre expertise", ko kandi Muhirwa na Muhorakeye bareze bagamije kubona indishyi, ari nayo mpamvu bari bajuririye urubanza rwaciwe n'Urukiko Rwisumbuye. Byongeye kandi, ingingo ya 187 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha hamwe n'iya 164 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'inkiko, zemerera uregera indishyi kujuririra ibirebana n'indishyi, ko rero ikibazo atari uko Nzeyimana yagizwe umwere ahubwo hagomba kurebwa ko Muhirwa na Muhorakeye baregeye indishyi.

[15] Ku kibazo cyabajijwe n'Urukiko cyo kumenya uko bumva igika cya gatatu cy'ingingo ya 28 y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru, bavuga ko icyo gika ari rusange ku manza nshinjabyaha, kikaba gikeneye gusobanurwa nkuko byakozwe mu rubanza RPAA0001/15/CS, ko kandi icyo gika kigomba kujyana n'agaciro k'indishyi zasabwe kuko ikirego kitatanzwe n'Ubushinjacyaha ahubwo cyatanzwe na Muhirwa na Muhorakeye. Basobanura ko iyo habaye kurega utisunze Ubushinjacyaha, haba hari ibirego bibiri bibangikanye (parallèles), ko ariko ikiba kigamijwe bwa mbere ari indishyi, ariko zigashingira ku kirego cy'inshinjabyaha.

[16] Uhagarariye Ubushinjacyaha avuga ko kuba abajuriye baratanze ikirego batabwisunze, byakomeza muri uwo murongo, ko ariko mu nyungu z'ubutabera, asanga hashingiwe ku biteganywa n'ingingo ya 28 y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru, uru rubanza rutatandukanywa n'izindi manza nshinjabyaha n'ubwo Ubushinjacyaha atari bwo bwareze, ko rero mu gihe nta bihano byatanzwe mu rubanza rujuririrwa, hakwibazwa niba umuburanyi ashobora kujurira ashingiye ku ndishyi, ko mu gihe icyo kirego cyakwakirwa, hakwibazwa aho urukiko rwashingira mu kizigena mu gihe nta kirego nshinjabyaha gihari.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 28, igika cya kabiri, 3º, y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko "Urukiko rw'Ikirenga rufite kandi ububasha bwo kuburanisha murwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru (…), iyo izo manza zaciwe hashingiwe ku kimenyetso, inyandiko cyangwaimyanzuro byatanzwe nyuma yo gupfundikira urubanza kandi hatarabayehogusubukura iburanisha".

[18] Mu gika cya gatatu, iyo ngingo iteganya ko "mu manza nshinjabyaha igihano cyagenwe ni cyo cyonyine gishingirwaho mu kugena ububasha bw'Urukiko rw'Ikirenga".

[19] Ku birebana n'ikimenyetso abajuriye bavuga ko cyatanzwe nyuma y'iburanisha kigizwe n'amasezerano y'ubugure bw'ikibanza hagati ya Nzeyimana Bertin na Mukayaramba Verediyana, Urukiko rurasanga ayo masezerano avugwa koko mu gika cya gatandatu cy'urubanza rwajuririwe, ariko bibaka bigaragara ko ayo masezerano (kimwe n'andi masezerano atandukanye), avugwa mu miburanire ya Nzeyimana Bertin n'abamwunganira mu rwego rwo kugaragaza ko hari ibibanza yagiye yiguriracyangwa bikagurwa n'umugore we.

[20] N'ubwo ariko ayo masezerano yavuzwe mu miburanire ya Nzeyimana Bertin ndetse n'umwanzuro w'ubujurire watanzwe na Me Shema Gakuba Charles ukaba ugaragaza ko ayo masezerano ari ku mugereka wa 38, dosiye igaragaza ko atigeze atangwa, kuko urutonde ry'imigereka iherekeza uwo mwanzuro rugaragaza ko nta mugereka wa 38 uri muri dosiye. Urukiko rugasanga rero ayo masezerano atafatwa nk'ikimenyetso kivugwa mu ngingo ya 28, igika cya kabiri, 3º, y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru, kuko iyo ngingo ivuga ikimenyetso cyatanzwe nyuma yo gupfundikira urubanza.

[21] Byongeye kandi, usibye no kuba ayo masezerano atafatwa nk'ikimenyetso cyatanzwe nyuma yo gupfundikira urubanza nk'uko bimaze gusobanurwa, nta n'ubwo yashingiweho mu rubanza rwajuririwe kuko mu mpamvu Urukiko rwashingiyeho zigaragara kuva ku gika cya 41 cy'urwo rubanza, ntaho ayo masezerano avugwa, kuko n'abayaburanisha bavuga ko avugwa mu gika cya 6 cy'urubanza, nyamara nk'uko byavuzwe icyo gika kireba imiburanira ya Nzeyimana Bertin, mu gihe ingingo ya 28 yavuzwe haruguru, yumvikanisha ko icyo kimenyetso kigomba kuba cyashingiweho mu icibwa ry'urubanza, bityo, ikimenyetso kigizwe n'amasezerano ya Mukayaramba Verediyana na Nzeyimana Bertin kikaba kitatuma ubujurire bwa Muhirwa na Muhorakeye buba mu bubasha bw'Urukiko rw'Ikirenga.

[22] Ku birebana n'agaciro k'amafaranga angana na 1.178.668.446Frw abajuriye bavuga ko bakurikiranye kuri Nzeyimana Bertin, akaba arenze kure 50.000.000Frw ateganywa n'ingingo ya 28, igika cya 2, 7º, y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru, Urukiko rurasanga kuba urubanza ruburanwa ari urw'inshinjabyaha kabone n'ubwo abareze batisunze Ubushinjabyaha, ububasha bw'Urukiko rw'Ikirenga bugomba kureberwa mu gika cya 3 cy'ingingo ya 28 y'Itegeko Ngenga rimaze kuvugwa, iteganya ko igihano cyo nyine ari cyo gishingirwaho mu kugena ubwo bubasha, icyo gika kikaba cyumvikanisha ko hatarebwa indishyi cyangwa agaciro k'ikiburanwa bivugwa mu gace ka 7º k'igika cya kabiri cy'iyo ngingo.

[23] Urukiko rurasanga na none, ububasha bw'Urukiko rw'Ikirenga butashingira kubiteganywa n'ingingo ya 187 y'Itegeko Nº30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha cyangwa iya 164 y'Itegeko Ngenga Nº51/2008

ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nkuko ababuranira abajuriye babivuga, kuko ntaho izo ngingo zihuriye n'ububasha bw'Urukiko rw'Ikirenga buteganywa mu ngingo ya 28 (ku birebana n'ububasha busanzwe) y'Itegeko Ngenga Nº03/2012/OL ryoku wa 13/06/2012 ryavuzwe haruguru.

[24] Urukiko rurasanga rero, kuba mu rubanza rujuririrwa, nta gihano Nzeyimana Bertin yahawe kuko n'igifungo cy'umwaka umwe yari yahawe ku rwego rwa mbere cyavanyweho mu bujurire nyuma yo kugirwa umwere, byumvikana ko ubujurire bwatanzwe butari mu bubasha bw'Urukiko rw'Ikirenga kuko urwo Rukiko ruburanisha uwahanishijwe igihano cy'igifungo cya burundu cyangwa kingana nibura n'imyaka 10 mu gihe habaye kwica amategeko mu buryo bukomeye, nkuko bivugwa mu duce twa 8º na 9º, tw'igika cya kabiri cy'ingingo ya 28 y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru.

[25] Ku birebana n'urubanza RPAA0001/15/CS rwaciwe n'uru Rukiko ku wa14/10/2015, abajuriye basaba ko rwashingirwaho hakemezwa ko ubujurirebwa Muhirwa na Muhorakeye buri mu bubasha bw'Urukiko rw'Ikirenga, Urukiko rurasanga ntaho mu mikirize y'urwo rubanza hakozwe isesengurwa ry'ububasha bw'uru Rukiko rishingiye ku ngingo ya 28 y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru ku buryo ryashingirwaho no muri uru rubanza.

[26] Hashingiwe ku byasobanuwe byose, Urukiko rurasanga ubujurire bwa Muhirwa Alexandre na Muhorakeye Grâce butari mu bubasha bw'Urukiko rw'Ikirenga.

III.ICYEMEZO CY'URUKIKO

[27] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga yatanzwe na Nzeyimana Bertin ifite ishingiro,

[28] Rwemeje ko ubujurire bwa Muhirwa Alexandre na Muhorakeye Grâce butari mu bubasha bw'Urukiko rw'Ikirenga;

[29] Rutegetse Muhirwa Alexandre na Murorakeye Grâce gufatanya gutanga amagarama y'urubanza angana na 100.000Frw.