UBUSHINJACYAHA v BAMIKA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RP00002/2020/SC (Nyirinkwaya, P.J. Hitiyaremye na Karimunda, J.) 17 Nzeli 2021]

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Imiburanishirize y'imanza – Ikirego cyihutirwa – Urubanza rw'iremezo – Kimwe mu byo ikirego cyihutirwa kigomba kuba cyujuje kugira ngo cyakirwe, harimo kuba gishamikiye ku kirego cy'iremezo kigitegereje kuburanishwa.

Incamake y'ikibazo: Uru rubanza rukomoka ku kirego cy'abitwa Magara Gahakwa na Kamanzi bandikiye Urwego rw'Umuvunyi basaba gusubirishamo ku mpamvu z'akarengane urubanza rwabo rwaciwe n'Urukiko Rukuru ku itariki ya 27/04/2018. Urwego rw'Umuvunyi rumaze gusuzuma ubwo busabe, rwasanze koko muri urwo rubanza harabayemo akarengane, maze rwandikira Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo, maze nawe ashingiye kuri raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko yemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Urwo rubanza hahamagajwemo n'abandi bari mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane barimo Bamika Rumanyika na Nzaramba, aba batanga ikirego cyihutirwa gishamikiye ku rubanza rwabasubirishijemo urubanza ku mpamvu z'akarengane basaba ko bafungurwa by'agateganyo bakaburana bari hanze.

Ubushinjacyaha bwatanze inzitizi busaba Urukiko ko urubanza ku kirego cyihutirwa rwazaburanishwa nyuma yo kujya impaka ku kibazo cyo kumenya niba abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane barimo Bamika Rumanyika na Nzaramba bashobora kuririra ku busabe bwa Magara Gahakwa na Kamanzi bagasaba ko hari icyahinduka ku byemezo byababafatiwe. Urukiko rwemeje ko ikirego cyihutirwa cyatanzwe na Bamika Rumanyika na Nzaramba kidashobora gusuzumwa hatarafatwa umwanzuro ku kibazo cyo kumenya niba ari ababuranyi bashobora kugira icyo basaba mu rubanza rw'iremezo, Urukiko rukaba rwarasanze nta busobekerane buri mu bikorwa byarezwe Magara Gahakwa na Kamanzi n'abandi bari hamwe mu rubanza.

Urubanza rwakomeje abatanze ikirego kihutirwa bavuga ko kuba urubanza rwaragaragayemo akarengane kandi rukaba ari rumwe ku baburanyi bose, ndetse ubusobekerane bukaba buhari, nta mpamvu ihari yatuma baba bafunzwe, akaba aricyo gituma basaba gufungurwa by'agateganyo.

Ubushinjacyaha buvuga ko ikirego cy'iremezo abatanze ikirego cyihutirwa bashingiyeho ntakigihari kubera ko abatanze ikirego basaba ko urubanza rusubirwamo ku mpamvu z'akarengane bagizwe abere

Incamake y'icyemezo: 1. Kuba nta kirego cy'iremezo cyahindura ibijyanye n'ifunga, bituma ikirego kihutirwa gisaba gufungurwa kitakirwa, bityo ikirego cya Bamika Rumanyika na Nzaramba nticyakiriwe.

Ikirego nticyakiriwe.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 185, igika cya mbere.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 26/08/2020, MAGARA GAHAKWA John na KAMANZI Charlotte bandikiye Urwego rw'Umuvunyi basaba gusubirishamo ku mpamvu z'akarengane urubanza n° RPA 00669/HC/KIG - RPA 00680/2018/HC/KIG - RPA 00664/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG – RPA 00745/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 27/04/2018.

[2] Urwego rw'Umuvunyi rumaze gusuzuma ubwo busabe, rwasanze koko muri urwo rubanza harabayemo akarengane, maze rwandikira Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo, maze Perezida w'Urukiko rw'Ikirenga, ashingiye kuri raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko, afata icyemezo n˚ 029/CJ/2020 ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, ruhabwa n° RS/INJUST/RP 00001/2020/SC.

[3] Urubanza rwaburanishijwe mu ruhame ku itariki ya 26/10/2020, hahamagajwe n'abandi bari mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane aribo Karake Mutsinzi Charles, Mawadza Nhamo, Bamika Rumanyika Herbert na Nzaramba Stevenson. Kuri uwo munsi, Urikiko rwifuje kubanza gusuzuma ikibazo cyo kumenya niba abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane bashobora kuririra ku busabe bwa Magara Gahakwa John na Kamanzi Charlotte bakagaragaza akarengane kabo, ariko uwo munsi icyo kibazo nticyasuzumwa kubera ko hari uwahamagajwe mu rubanza utari witabiriye iburanisha.

[4] Ku itariki ya 29/10/2020, Bamika Rumanyika Herbert na Nzaramba Stevenson barafashwe barafungwa mu rwego rwo kurangiza urubanza n° RPA 00669/HC/KIG - RPA 00680/2018/HC/KIG - RPA 00664/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG – RPA 00745/2017/HC/KIG, bituma ku itariki ya 01/11/2020, batanga ikirego cyihutirwa gishamikiye ku rubanza n° RS/INJUST/RP 00001/2020/SC basaba ko bafungurwa by'agateganyo bakaburana bari hanze bashingiye ku ngingo ya 64, igika cya 2, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa ku mpamvu z'akarengane ariko rutararangizwa, irangizwa ryarwo rihita rihagarara, kabone n'iyo imihango yo kururangiza yaba yaratangiye, ikirego gihabwa n° RP 00002/2020/SC.

[5] Urubanza ku kirego cyihutirwa rwaburanishijwe mu ruhame ku itariki ya 18/11/2020, Bamika Rumanyika Herbert yunganiwe na Me Gashagaza Philibert afatanyije na Me Nyirangirimana Astérie, Nzaramba Stevenson yunganiwe na Me Kanyambo Diogène afatanyije

na Me Rutabingwa Athanase, Ubushinjacyaha buhagarariwe na Uwombonye Hirwa Sudi, Umushinjacyaha ku rwego rw'Igihugu.

[6] Iburanisha rigitangira, Ubushinjacyaha bwatanze inzitizi busaba Urukiko ko urubanza ku kirego cyihutirwa rwazaburanishwa nyuma yo kujya impaka ku kibazo cyo kumenya niba abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane barimo Bamika Rumanyika Herbert na Nzaramba Stevenson bashobora kuririra ku busabe bwa Magara Gahakwa John na Kamanzi Charlotte bagasaba ko hari icyahinduka ku byemezo byababafatiwe.

[7] Kuri iyo nzitizi, Urukiko rwafatiye icyemezo mu ntebe, rusanga ibyo Bamika Rumanyika Herbert na Nzaramba Stevenson basaba bifitanye isano n'ikibazo cyagombaga gusuzumwa mu iburanisha ry'urubanza RS/INJUST/RP 00001/2020/SC ryari riteganyijwe ku itariki ya 03/12/2020, maze rushingiye ku ngingo ya 186, igika cya 3, y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, by'uko umucamanza uburanisha ikirego cyihutirwa afata icyemezo ku byo yaregewe ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo, rwemeza ko ikirego cyihutirwa cyatanzwe na Bamika Rumanyika Herbert na Nzaramba Stevenson kidashobora gusuzumwa hatarafatwa umwanzuro ku kibazo cyo kumenya niba ari ababuranyi bashobora kugira icyo basaba mu rubanza rw'iremezo.

[8] Ku itariki ya 03/12/2020, haburanishijwe urubanza RS/INJUST/RP 00001/2020/SC, hasuzumwa ikibazo cyo kumenya niba Bamika Rumanyika Herbert, Karake Mutsinzi Charles, Mawazda Nhamo na Nzaramba Stevenson batasabye ko urubanza rusubirwamo ku mpamvu z'akarengane bakuririra ku busabe bwa Magara Gahakwa John na Kamanzi Charlotte bagasaba ko hagira igihinduka ku byemezo byababafatiwe muri urwo rubanza.

[9] Nyuma yo gusuzuma ibisobanuro bya buri wese kuri icyo kibazo, ku itariki ya 23/12/2020, Urukiko rwafashe icyemezo ko akarengane kagomba gusuzumwa mu rubanza n° RPA 00669/HC/KIG - RPA 00680/2018/HC/KIG - RPA 00664/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG – RPA 00745/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 27/04/2018, ari akareba Magara Gahakwa John na Kamanzi Charlotte gusa, ko ababaye ababuranyi muri urwo rubanza baruhamagarwamo, Urukiko rugashobora kugira icyo rubabaza cyafasha mu miricire y'urubanza cyangwa nabo bakaba bagira amakuru batanga, ariko bakaba badashobora gusaba ko urwo rubanza ruhinduka ku byerekeye ibyemezo bari bafatiwe, keretse rusanze hari ubusobekerane bw'ibiburanwa ku buryo rudashobora gufata icyemezo ku busabe bw'abasabye ko urubanza rusubirwamo bitagize ingaruka ku byemezo byafatiwe abatarabisabye kandi ku buryo bubafitiye inyungu.

[10] Ku itariki ya 18/01/2021, iburanisha ryakomeje Urukiko rusuzuma niba Magara John na KAMANZI Charlotte barakoze ibikorwa bigize ibyaha bakurikiranweho bagamije gufasha ubutabera nk'uko babivugaga, bityo bakaba bataragombaga gukurikiranwa mu rubanza. Ku itariki ya 19/02/2021, Urukiko rwemeje ko batagombaga gukurikiranwa ku byaha bivugwa muri urwo rubanza, bityo bakaba ari abere ku byaha baruregwagamo, rwemeza ko iburanisha rizafungurwa kugira ngo hasuzumwe ingingo yerekeye amafaranga agomba gusubizwa SONARWA.

[11] Urubanza ku kirego cyihutirwa rwongeye guhamagazwa ku itariki ya 14/09/2021, ababuranyi bitaba Urukiko, Bamika Rumanyika Herbert yunganiwe na Me Habineza Gasore

Gilbert, Nzaramba Stevenson yunganiwe na Me Kanyambo Diogène afatanyije na Me Rutabingwa Athanase, Ubushinjacyaha buhagarariwe na Uwombonye Hirwa Sudi, Umushinjacyaha ku rwego rw'Igihugu, hasuzumwa ikibazo kijyanye no kumenya niba ikirego cyihutirwa gifite ikirego cy'iremezo gishamikiyeho ku buryo cyakwakirwa.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba ikirego cyihutirwa cyatanzwe na Nzaramba Stevenson na Bamika Rumanyika Herbert cyakwakirwa.

[12] Me Habineza Gasore Gilbert wunganira Bamika Rumanyika Herbert avuga ko ikirego cyihutirwa gisaba gufungurwa by'agateganyo gifite aho gishingiye kubera ko hakiri urubanza rw'iremezo rugomba kuzasuzuma niba hari ubusobekerane hagati y'ibyaregwaga abasubirishijemo urubanza ku mpamvu z'akarengane n'abandi baje mu rubanza nyuma barimo na Bamika Rumanyika Herbert. Avuga ko kuba urubanza rugikomeza kandi Bamika Rumanyika Herbert afunze bigaragaza ko afunzwe mu buryo bunyuranyije n'amategeko, kuko mu rubanza ruteganyijwe kuburanishwa ku itariki ya 13/10/2021, bishobora kuzagaragara ko harimo ubusobekerane kuko icyo kibazo kitarafatwaho umwanzuro.

[13] Arangiza avuga ko kuba abari barasabye ko urubanza rusubirwamo ku mpamvu z'akarengane batakiri mu rubanza nta ngaruka bigomba kugira ku wo yunganira wasabye gufungurwa by'agateganyo kubera ko hakiri urubanza ruzasuzuma indishyi zigomba guhabwa SONARWA, kandi ikirego cy'indishyi kikaba kitatandukanywa n'icy'inshinjabyaha. Kuba rero ari umuburanyi muri urwo rubanza, ikirego cyihutirwa yatanze asaba kurekurwa by'agateganyo kikaba kigifite aho gishingiye.

[14] Bamika Rumanyika Herbert avuga ko kuba urubanza rwaragaragayemo akarengane kandi rukaba ari rumwe ku baburanyi bose, ndetse ubusobekerane bukaba buhari, nta mpamvu ihari yatuma aba afunzwe, akaba aricyo gituma asaba gufungurwa by'agateganyo.

[15] Me Rutabingwa Athanase wunganira Nzaramba Stevenson, avuga ko kuba ibijyanye no kuburana amafaranga ya SONARWA bigikomeza, ubusobekerane buhari kuko bataburana gusubiza amafaranga akomoka ku cyaha batarakiburanyeho. Avuga ko kuba urubanza rutaraburanishwa mu mizi, bisobanuye ko ubusabe bw'uwo yunganira bugomba gusuzumwa hashingiwe ku biteganywa n'ingingo ya 64 y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, kuko urubanza rw'iremezo rutarapfundikirwa. Avuga ko kuba abatanze ikirego cyihutirwa barafashwe bagafungwa kandi hari ikirego cy'akarengane n'ubu kigikomeza kuko kitararangira, bafunze mu buryo bunyuranyije n'amategeko.

[16] Me Kanyambo Diogène nawe wunganira Nzaramba Stevenson avuga ko ikirego cyihutirwa cyatanzwe n'uwo yunganira asaba kurekurwa by'agateganyo gifite aho gishingiye, kubera ko urubanza Kamanzi Charlotte na Magara Gahakwa John bashoje rugikomeje kandi akaba ari umuburanyi muri rwo kuko ku itariki ya 13/10/2021 azaba ari imbere y'Urukiko aburana amafaranga azasubizwa SONARWA.

[17] Nzaramba Stevenson avuga ko, mu gufata icyemezo, Urukiko rwazasuzuma igihe bafatiwe n'igihe icyemezo cy'Urukiko cy'uko atari ababuranyi cyafatiwe. Asobanura ko bafunzwe ku itariki ya 29/10/2020, icyemezo cy'uko atari ababuranyi kigafatwa nyuma. Avuga ko batigeze banaburana ibijyanye n'ifunga n'ifungurwa by'agateganyo, ko bagejejwe imbere y'urukiko bakaburana ku bijyanye no kumenya niba ari ababuranyi cyangwa ataribo.

[18] Uhagarariye Ubushinjacyaha avuga ko ikirego cy'iremezo abatanze ikirego cyihutirwa bashingiyeho ntakigihari kubera ko abatanze ikirego basaba ko urubanza rusubirwamo ku mpamvu z'akarengane bagizwe abere, bivuze ko n'urubanza rutagihari, bityo ko ikirego cyihutirwa Nzaramba Stevenson na Bamika Rumanyika Herbert bari baratanze kitagifite aho gishingiye.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 185, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 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 bwihuta ku rubanza rwaregewe Urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara ».

[20] Isesengura ry'ingingo imaze kuvugwa, ryumvikanisha ko kimwe mu byo ikirego cyihutirwa kigomba kuba cyujuje kugira ngo cyakirwe, harimo kuba gishamikiye ku kirego cy'iremezo kigitegereje kuburanishwa.

[21] Ku birebana n'uru rubanza, Bamika Rumanyika Herbert na Nzaramba Stevenson ikirego cy'iremezo bashingiyeho batanga ikirego cyihutirwa, ni urubanza nº RS/INJUST/RP 00001/2020/SC rwashojwe na Magara Gahakwa John na Kamanzi Charlotte aho basabaga ko urubanza RPA 00669/HC/KIG - RPA 00680/2018/HC/KIG - RPA 00664/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA 00745/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 27/04/2018 rwasubirwamo ku mpamvu z'akarengane. Kugira ngo urwo rubanza rube rwafatwa nk'urw'iremezo ku kirego cyihutirwa cyatanzwe na Bamika Rumanyika Herbert na Nzaramba Stevenson, Urukiko rukaba rwaragombaga kubanza gukemura ikibazo cyo kumenya niba ari ababuranyi muri urwo rubanza bashobora gusaba ko hari igihinduka ku byemezo byababafatiwe bibafitiye inyungu.

[22] Nk'uko byasobanuwe haruguru mu miterere y'urubanza, ku itariki ya 23/12/2020, Urukiko rwafashe icyemezo ko akarengane kagomba gusuzumwa mu rubanza RPA 00669/HC/KIG - RPA 00680/2018/HC/KIG - RPA 00664/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG – RPA 00745/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 27/04/2018, ari akareba Magara Gahakwa John na Kamanzi Charlotte gusa, rukaba rwafata icyemezo ku bireba abandi ari uko rusanze hari ubusobekerane bw'ibiburanwa.

[23] Nk'uko kandi byibukijwe haruguru, ku itariki ya 19/02/2021, Urukiko rwaciye urubanza rwemeza ko Magara Gahakwa John na Kamanzi Charlotte batagombaga gukurikiranwa ku byaha bivugwa muri urwo rubanza, rwemeza ko iburanisha rizafungurwa kugira ngo hasuzumwe ingingo yerekeye amafaranga agomba gusubizwa SONARWA.

[24] Urukiko rurasanga, kuba nta cyemezo cyafashwe ku bandi barimo na Bamika Rumanyika Herbert na Nzaramba Stevenson, ari uko Urukiko rwasanze nta busobekerane buri mu bikorwa byarezwe Magara Gahakwa John na Kamanzi Charlotte n'abandi bari hamwe mu rubanza.

[25] Urukiko rurasanga ibyo byemezo byombi byafashwe mu rubanza RS/INJUST/RP 00001/2020/SC Bamika Rumanyika Herbert na Nzaramba Stevenson bashingiragaho nk'urubanza rw'iremezo batanga ikirego cyihutirwa, byarabakuye mu baburanyi bashobora gusaba ko urubanza rwasubirishijwemo ku mpamvu z'akarengane ruhinduka ku byerekeye ibyemezo bari bafatiwe.

[26] Hashingiwe ku ngingo ya 185, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru no ku bisobanuro byatanzwe, Urukiko rusanga ikirego cyihutirwa cyatanzwe na Nzaramba Stevenson hamwe na Bamika Rumanyika Herbert kitagomba kwakirwa kubera ko nta kirego cy'iremezo gihari ku bibareba cyahindura ibijyanye n'ifungwa baregera mu kirego cyihutirwa.

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko ikirego cyihutirwa cyatanzwe na Bamika Rumanyika Herbert na Nzaramba Stevenson kitakiriwe.