Re MURANGWA

[Rwanda URUKIKO RW'IKIRENGA– RS/INCONST/SPEC 00001/2022/SC – (Mukamulisa, P.J., Cyanzayire, Hitiyaremye, Muhumuza na Karimunda J.) 16 Ukuboza 2022]

Itegeko Nshinga – Ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranye n'Itegeko Nshinga – Inyungu z'utanga ikirego – Mu gusuzuma inyungu z'urega hagomba kurebwa ibi ibintu bikurikira, kuba hariho kimwe muri byo bikaba byihagije kugira ngo Urukiko rwemeze ko urega afite inyungu. – Niba hari itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba urega cyangwa icyiciro abarizwamo by'umwihariko ku buryo afite inyungu ku giti cye zo gutanga ikirego – Niba itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba abaturage muri rusange ku buryo rishobora kugira ingaruka ku burenganzira bwabo, ibyo bikaba aribyo bihesha umuntu uwo ari we wese rishobora kuzagiraho ingaruka inyungu zo kuriregera ko rinyuranyije n'Itegeko Nshinga – Niba uwatanze ikirego ari umwavoka, uyu akaba mu nyungu z'ubutabera, yemerewe gutanga ikirego mu rwego rwo guteza imbere amategeko cyangwa uburenganzira bw'abarebwa n'iryo tegeko kabone nubwo nta nyungu we ku giti cye yaba afite muri icyo kirego.

Incamake y'ikibazo: Murangwa yatanze ikirego mu Rukiko rw'Ikirenga aregera ko ingingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushizwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70, z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zinyuranye n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015. Asaba kandi ko mu gihe izo ngingo zaba zitavanweho, Urukiko, mu bushishozi bwarwo, rwaziha umurongo utuma zitagira uwo zihutaza kandi mu buryo butabangamiye inshingano z'inzego z'umutekano.

Yasabye kandi Urukiko gutegeka Leta n'inzego zifite aho zihuriye n'iperereza guhagarika kwereka itangazamakuru abakekwaho ibyaha no kubahatira kuvugana naryo ndetse rugategeka abayobozi b'ibitangazamakuru, imbuga nkoranyambaga harimo na *youtube* n'umuntu uwo ariwe wese, guhanagura burundu mu bubiko bwabo amafoto n'amashusho y'abakekwaho ibyaha bafashe.

Mbere yo gusuzuma ubu busabe bwa Murangwa, habanje gusuzumwa ikibazo cyo kumenya niba afite inyungu muri uru rubanza kuko avuga ko afite uburenganzira bwo gusaba ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga zivanwaho atabanje gutegereza ko zimugiraho ingaruka.

Avuga ko kuregera ingingo ko inyuranyije n'Itegeko Nshinga mbere y'uko ikugiraho ingaruka ari nko kwikingiza mbere y'uko urwara, ko mu gihe rero abona ingingo aregera zibangamiye uburenganzira bwe bw'ibanze buteganywa n'Itegeko Nshinga, nta kibuza ko aziregera kandi ko bidakwiye ko Urukiko rufata icyo kibazo nk'ikitariho nyamara itegeko ryarasohotse mu Igazeti ya Leta ndetse akaba asabwa gukora icyo ritegeka cyangwa kudakora icyo ribuza.

Abahagarariye Leta y'u Rwanda bavuga ko inyungu zo kurega ari impamvu y'ingenzi kugira ngo ikirego cyakirwe, ko bidakwiye ko uwo ari we wese yemererwa kurega no mu gihe yaba adafite inyungu kuko bishobora gutera akajagari ndetse bikaba byaburizamo ibirego by'abari babifitemo inyungu.

Bakomeza bavuga ko Murangwa agaragaza inyungu rusange gusa aho kugaragaza inyungu bwite, ko ikirego cye kiramutse cyakiriwe cyaba cyitiranyijwe n'icyatanzwe mu nyungu za rubanda. Nubwo bikwiye ko Urukiko rwagura ububasha bw'abatanga bene ibi birego mu rwego rwo kurengera inyungu rusange, umurongo rwatanze uzitira ababitanga ku bw'impamvu zitazwi cyangwa izo kwimenyekanisha kandi ko ibyo bifasha mu gukumira ibirego bitari ngombwa bishobora kugira ingaruka ku itangwa ry'ubutabera bunoze.

Incamake y'icyemezo: Urega agira inyungu mu manza zisaba gukuraho itegeko rinyuranye n'Itegeko Nshinga, iyo, ku buryo bw'umwihariko, we cyangwa icyiciro abarizwamo arebwa niryo tegeko, kuba rireba abaturage muri rusange ku buryo rishobora kugira ingaruka ku burenganzira bwabo no kuba uwatanze ikirego ari umwavoka ubyemerewe, mu rwego rwo guteza imbere amategeko cyangwa uburenganzira bw'abarebwa n'iryo tegeko.

Urega afite inyungu mu rubanza.
Iburanisha ry'urubanza rizakomeza.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 3, 13, 14, 23, 24, 29, 41, 43 n'iya 61.

Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 38, 55, 56, 57, 60, 61 n'iya 70.

Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, ingingo ya 72.

Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu Rushizwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, ingingo ya 10.

Imanza zifashishijwe:

Re Me Kabuye Ngendahayo, RS/ICONST/SPEC 00004/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/02/2022.

Re Byansi Samuel Baker, RS/INCONST/SPEC 00002/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2021.

Re Byansi Samuel Baker, RS/INCONST/SPEC 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021.

Re Mugisha Richard, RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019.

Re Bisengimana Jerome, RS/INCONST/CIV 0001/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/11/2012, igika cya 7.

Re Ingabire Umuhoza Victoire, RS/CONST/0002/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/10/2012.

Re Ntawuburintimba Alivéra, RS/INCONST/002/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 27/04/2012, igika cya 5.

Re Uwimana Jeannette, RS/INCONST/CIV 0002/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/06/2010, igika cya 5.

Re Mutebwa Alfred, RS/INCONST/Pén.0001/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/01/2008.

Ferreira Clive v Levin Allan and Others, CCT 5/95 of 06/12/1995.

Rev. Christopher Mtikila v Attorney General [1994] TZHC 12.

A.G. of Dendel State v A.G. of Nigeria (1983) ANLR 208.

R (NFSE) v IRC [1982] AC 617.

Abraham Ade Adesanya v President of the Federal Republic of Nigeria and The Hon Justice Ovie Whiskey (1981) All N.L.R 1.

Klass and Others v Germany, Judgement of 6 September 1978, Series A, n° 28.

Thorson v. Attorney General of Canada [1975] 1 SCR 138.

Inyandiko z'abahanga zifashishijwe:

Blandine Rolland, Procédure Civile, in Panorama du Droit de Guillaume Bernard, Studyrama, 2005, p.5.

Cédric Tahri, Procédure civile, Lexifac-Droit, Bréal, 2007, p.84.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Ku wa 15/01/2022, Murangwa Edward yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushizwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo; ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70, z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha zinyuranyije n'ingingo ya 13, iya 14, iya 23, iya 24, iya 29, iya 43 n'iya 61 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015. Yasabye kandi ko mu gihe ingingo zaregewe ko zinyuranyije n'ingingo z'Itegeko Nshinga zaba zitavanweho, Urukiko, mu bushishozi bwarwo, rwaziha umurongo utuma zitagira uwo zihutaza kandi mu buryo butabangamiye inshingano z'inzego z'umutekano.

[2] Murangwa Edward asaba kandi Urukiko gutegeka Leta n'inzego zifite aho zihuriye n'iperereza guhagarika kwereka itangazamakuru abakekwaho ibyaha no kubahatira kuvugana naryo, ndetse rukanategeka abayobozi b'ibitangazamakuru, imbuga nkoranyambaga harimo na *youtube*, n'umuntu uwo ariwe wese, guhanagura burundu mu bubiko bwabo amafoto n'amashushoy'abakekwaho ibyaha bafashe.

[3] By'umwihariko, Murangwa Edward avuga ko:

- Kuba ingingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo iteganya impamvu n'ibihe Urwego rw'Igihugu rushinzwe Ubugenzacyaha rushobora gusaka umuntu cyangwa ibintu, kwinjira mu nyubako cyangwa ahantu nta ruhushya rwo gusaka, kuba rwakora isaka rudafite urupapuro rw'isaka, ari ukuvogera uburenganzira buteganywa n'Itegeko Nshinga.
- Kuba ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70, z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha zifite aho zihuriye n'ingingo ya 10, agace ka 3, a, b na c n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru, kuko zose zijyanye n'isaka ry'umuntu, ahantu, ingo, ibiro cyangwa ahandi aho ariho hose hakekwa ko habereye cyangwa hafitanye isano n'ikorwa ry'icyaha, zikaba kandi ziteganya ko uruhushya rwo gusaka rutangwa n'urwego rubarizwa mu butegetsi nyubahirizategeko (*executive*), nyamara ingingo ya 43 y'Itegeko Nshinga iteganya ko Ubutegetsi bw'Ubucamanza ari bwo murinzi w'uburenganzira n'ubwisanzure bwa muntu, ari nabwo bukwiye gutanga urupapuro rw'isaka.
- Kuba ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ziteganya igenzura ry'itumanaho mu iperereza n'ikurikiranacyaha, isaka, gukoresha isaka ryo ku mubiri cyangwa mu mubiri, ifatira n'itambamira ry'ibintu, uburenganzira bwo gusaka no kujya ahashobora kuboneka ibimenyetso, abafite ububasha bwo gutanga urwandiko rwo gusaka ndetse no kugenzura ukekwaho icyaha hifashishijwe ikoranabuhanga, bibangamiye uburenganzira n'ubwisanzure bwa muntu buteganywa n'Itegeko Nshinga. Ibyo abisobanura mu buryo bukurikira:

- Mu gukoresha uburenganzira n'ubwisanzure, buri wese azitirwa gusa n'Itegeko rigamije kwemera no kubahiriza uburenganzira n'ubwisanzure by'abandi ndetse n'imyitwarire iboneye, ituze rusangerya rubanda n'imibereho myiza muri rusange biranga Igihugu kigendera kuri demokarasi nk'uko biteganywa n'ingingo ya 41 y'Itegeko Nshinga, ari nayo mpamvu kurinda ubwo burenganzira bigomba gukorwa n'Ubutegetsi bw'Ubucamanza *(judiciary)* kuko arirwo rwego rwabishinzwe n'Itegeko Nshinga;
- Uburenganzira bw'umuntu ni ntavogerwa, Itegeko Nshinga rikaba rigena uko burindwa, uko bwubahirizwa ndetse n'Urwego rw'Ubutegetsi rufite inshingano zo kuburinda, bivuze ko, hashingiwe ku biteganywa n'ingingo ya 3 yaryo ivuga ko Itegeko Nshinga ari ryo risumba ayandi kandi ko Itegeko ryose, icyemezo cyangwa igikorwa cyose binyuranyije naryo nta gaciro bigira, ingingo z'Itegeko zanyuranya n'uko Itegeko Nshinga ryabiteganyije nta gaciro zifite;
- Mu gihe hatanzwe urupapuro rw'isaka cyangwa mu gihe habayeho gusaka nta rupapuro, gusaka umuntu ku mubiri n'imbere mu mubiri, inyubako, mu rugo n'ahakorerwa imirimo, hagomba kubahirizwa ihame ryo gufatwa nk'umwere k'ukekwaho icyaha kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha nk'uko biteganywa n'Itegeko Nshinga rya Repubulika y'u Rwanda ndetse n'amasezerano mpuzamahanga atandukanye u Rwanda rwashyizeho umukono;
- Mu gihe uruhushya rw'isaka, kumviriza, kugenzura, gusaka ku mubiri no mu mubiri cyangwa ibindi bikorwa bivugwa mu ngingo z'amategeko zasabiwe ko zakurwaho, rutanzwe n'Urwego rutagenwe n'Itegeko Nshinga byaba bivuze ko icyo gikorwa n'amategeko gishingiyeho binyuranye n'ingingo ya 23, agace ka 2 n'aka 3, iya 43 n'iya 61 z'Itegeko Nshinga, bityo bikaba nta gaciro bifite;

- Kuba ibiteganywa n'ingingo ya 10, agace ka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru by'uko umuntu uwo ari we wese ashobora gutegekwa gutanga amakuru yafasha mu iperereza ndetse n'ukekwaho icyaha akaba yagaragarizwa itangazamakuru ngo agire ibyo aritangariza bibangamiye ibiteganywa n'ingingo zikurikira:
  - Ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya uburenganzira ku butabera buboneye cyane cyane ihame ry'uko umuntu wese afite uburenganzira bwo gufatwa nk'umwere kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha;
  - Ingingo ya 73 n'iya 107 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ziteganya ibanga mu gihe cy'iperereza mu manza nshinjabyaha n'ufite inshingano zo gutanga ibimenyetso muri bene izo manza;
- Kuba hashingiwe ku burenganzira ku butabera buboneye, uburenganzira ku mibereho bwite by'ukekwaho icyaha, umuryango we n'aho yakoraga ndetse n'inshingano z'inzego zishinzwe gukumira no kurwanya ibyaha, uru Rukiko rukwiye gutanga umurongo usobanura uburyo amagambo, impamvu zifatika, ibimenyetso bifatika n'ibimenyetso bikomeye, yakoreshejwe mu ngingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 ryavuzwe haruguru akwiye kumvikana n'imbibi zayo, ibi bigakorwa mu nyungu z'itegeko;

[4] Iburanisha mu ruhame ryabaye ku wa 18/10/2022, Murangwa Edward yunganiwe na Me Rugemintwaza Jean Marie Vienney na Me Bahati Védaste, naho Leta y'u Rwanda ihagarariwe na

Me Kabibi Spéciose na Me Kayitesi Pétronille, habanza gusuzumwa ikibazo cyabyukijwe n'Urukiko cyo kumenya niba Murangwa Edward afite inyungu muri uru rubanza.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO.

1. Kumenya niba Murangwa Edward afite inyungu muri uru rubanza

[5] Murangwa Edward n'abamwunganira bavuga ko, nk'umuntu urebwa n'itegeko ryose risohotse mu Igazeti ya Leta, akaba asabwa gukora icyo ritegeka cyangwa kudakora icyo ribuza, ingingo aregera zibangamiye inyungu ze kuko zigena imihango ikurikizwa mu gihe cy'isaka kandi zigashyiraho urwego rufite ububasha bwo gutanga uruhushya rw'isaka. Basobanura ko izo ngingo zijyanye n'ikurikiranacyaha zireba buri wese uri mu Rwanda, harimo na we ubwe n'umuryango we, bakaba basanga uburyo izo ngingo zabiteganyije binyuranyije n'ibiteganywa n'Itegeko Nshinga cyane cyane mu ngingo yaryo ya 43, ariyo mpamvu afite uburenganzira bwo gusaba ko ingingo z'Itegeko zinyuranyije n'Itegeko Nshinga zivanwaho atabanje gutegereza ko zimugiraho ingaruka.

[6] Bavuga ko kuregera ingingo ko inyuranyije n'Itegeko Nshinga mbere y'uko ikugiraho ingaruka ari nko kwikingiza mbere y'uko urwara, ko mu gihe rero abona ingingo aregera zibangamiye uburenganzira bwe bw'ibanze buteganywa n'Itegeko Nshinga, nta kibuza ko aziregera, kandi ko bidakwiye ko Urukiko rufata icyo kibazo nk'ikitariho nyamara Itegeko ryarasohotse mu Igazeti ya Leta. Avuga ko ibisobanuro by'inyungu afite muri uru rubanza abishingira ku biteganywa n'ingingo ya 72, igika cya mbere, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko.[1] Avuga ko mu gusesengura iyo ngingo, uru Rukiko rwatanze umurongo mu rubanza rwa Me Mugisha Richard[2], aho rwavuze ko mu birego bijyanye no kwemeza ko hari ingingo z'Itegeko zinyuranye n'Itegeko Nshinga, umuburanyi ashobora gusaba ko itegeko rivaho agamije kurengera inyungu rusange za rubanda bitabaye ngombwa ko agaragaza inyungu bwite abifitemo.

[7] Bavuga ko kuba umuntu ashobora gusaba ko itegeko rivaho bitabaye ngombwa kugaragaza ko ryakoreshejwe kuri we, byemejwe n'izindi nkiko harimo n'Urukiko rw'Uburayi rushinzwe iyubahirizwa ry'uburenganzira bwa muntu mu rubanza Klass n'abandi baburanagamo n'Ubudage,[3] ndetse n'Inkiko zishinzwe kurinda Itegeko Nshinga nk'uko bigaragazwa n'urubanza Ferreira yaburanaga na Allan Levin na bagenzi be rwaciwe n'Urukiko rwa Afurika y'Epfo rushinzwe kurinda iremezo ry'Itegeko Nshinga,[4] urubanza *Rev. Christopher Mtikila* yaburanaga na *The Attorney General* rwaciwe n'Urukiko Rukuru rwa Tanzaniya,[5] urubanza *IRC* yaburanaga na *National Federation of Self-Employed and Small Businesses Ltd* rwo mu Bwongereza,[6] urubanza *Thorson* yaburanaga na *Attorney General of Canada*,[7] urubanza Adesanya yaburanaga na *President of Nigeria & Another*[8] n'urubanza *A.G. of Dendel State* yaburanaga na *A.G. of Nigeria*.[9]

[8] Me Kabibi Spéciose na Me Kayitesi Petronille bahagarariye Leta y'u Rwanda, bavuga ko inyungu zo kurega ari impamvu y'ingenzi kugira ngo ikirego cyakirwe. Basobanura ko bidakwiye ko uwo ari we wese yemererwa kurega no mu gihe yaba adafite inyungu kuko bishobora gutera akajagari

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[1] Iteganya ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranije n'Itegeko Nshinga iyo babifitemo inyungu.
[2] Reba urubanza RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga, ku wa 18/01/2019.
[3] Reba urubanza Klass and Others v Germany, Judgement of 6 September 1978, Series A, n° 28.
[4] Ferreira Clive v Levin Allan and Others, CCT 5/95 of 06/12/1995.
[5] Rev. Christopher Mtikila v Attorney General [1994] TZHC 12.
[6] R (NFSE) v IRC [1982] AC 617.
[7] Thorson v. Attorney General of Canada [1975] 1 SCR 138.
[8] Abraham Ade Adesanya v President of the Federal Republic of Nigeria and The Hon Justice Ovie Whiskey (1981) All N.L.R 1.
[9] A.G. of Dendel State v A.G. of Nigeria (1983) ANLR 208.

ndetse bikaba byaburizamo ibirego by'abari babifitemo inyungu. Bavuga ko umuhanga *Blandine Rolland* mu gitabo cye cya *Procédure civile*, avuga ko urega agomba kuba afite inyungu bwite kandi itagenekereje mu gihe cyo gutanga ikirego,[10] naho *Cédric Tahri*, nawe mu gitabo cyitwa *Procédure civile* akongeraho ko iyo nta nyungu ihari nta n'ikirego cyakagombye kubaho, ndetse ko iyo nyungu igomba kuba igaragara aho gushingira ku byifuzo by'utanga ikirego.[11]

[9] Bavuga ko ibijyanye n'inyungu bwite byasobanuwe neza n'uru Rukiko mu rubanza rwa Byansi Samuel Baker,[12] uru Rukiko rutanga umurongo w'uko inyungu z'urega zivugwa mu ngingo ya 72 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ari impamvu y'ingenzi kugira ngo ikirego cyemeza ko itegeko rinyuranyije n'Itegeko Nshinga cyakirwe, kandi ko izo nyungu zigomba kumvikana nk'inyungu bwite kandi zitaziguye zerekana ko urega abangamiwe n'ingingo z'amategeko asaba ko zivanwaho. Ku bireba Murangwa Edward, bavuga ko agaragaza inyungu rusange gusa aho kugaragaza inyungu bwite, ko ikirego cye kiramutse cyakiriwe cyaba cyitiranyijwe n'icyatanzwe mu nyungu za rubanda (*public interest litigation*). Bavuga ko nubwo bikwiye ko Urukiko rwagura ububasha bw'abatanga bene ibi birego mu rwego rwo kurengera inyungu rusange, umurongo rwatanze uzitira ababitanga ku bw'impamvu zitazwi cyangwa izo kwimenyekanisha kandi ko ibyo bifasha mu gukumira ibirego bitari ngombwa bishobora kugira ingaruka ku itangwa ry'ubutabera bunoze.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 72, igika cya mbere, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ivuga ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga iyo babifitemo inyungu.

[11] Ikibazo cy'inyungu z'urega mu rubanza rusaba kuvanaho ingingo z'Itegeko kuko zinyuranyije n'Itegeko Nshinga cyasuzumwe n'uru Rukiko mu manza zitandukanye. Mu rubanza rwa Mutebwa Alfred,[13] urwa Uwimana Jeannette,[14] urwa Ingabire Umuhoza Victoire,[15]urwa Bisengimana Jérôme,[16] n'urwa Ntawuburintimba Alivéra,[17] uru Rukiko rwasanze buri wese afite inyungu zo gutanga ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga

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[10] *L'intérêt pour agir correspond à l'avantage que l'action est susceptible de procurer au plaideur. .... Cette condition est essentielle et traditionnelle, comme en témoigne la maxime: Pas d'intérêt, pas d'action. L'intérêt peut être pécuniaire (évaluable en argent), ou bien seulement moral. Il est donc patrimonial ou extrapatrimonial. Mais il doit en plus revêtir certaines caractéristiques. Il doit exister au jour de l'action (être né et actuel) et être légitime, personnel et direct.* Reba Blandine Rolland, Procédure Civile, in Panorama du Droit de Guillaume Bernard, Studyrama, 2005, p.5.

[11] *Le titulaire d'une action doit justifier d'une intention à agir, défini comme l'avantage moral ou matériel que l'action est susceptible de procurer au plaideur. La maxime: pas d'intérêt, pas d'action" reflète ce principe. ....*
En outre, il doit être né et actuel et pas seulement éventuel ou hypothétique. Reba Cédric Tahri, Procédure civile, Lexifac-Droit, Bréal, 2007, p.84.

[12] Reba urubanza rubanza RS/INCONST/SPEC 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021.

[13] Reba urubanza RS/INCONST/Pén.0001/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/01/2008.

[14] Ku byerekeye ikirego cyatanzwe na Uwimana Jeannette, … afite inyungu yo gutanga icyo kirego kuko aburana urubanza mu Rukiko Rukuru asanga ingingo aregera ishobora kumubangamira mu bujurire bwe. Reba urubanza RS/INCONST/CIV 0002/09/CS rwaciwe ku wa 18/06/2010, igika cya 5.

[15] Ingabire Umuhoza Victoire afite inyungu yo gutanga ikirego kigamije gukuraho ingingo z'amategeko (aregera) kubera ko afite urubanza rw'inshinjabyaha aburana mu Rukiko Rukuru akurikiranweho icyaha cyo gupfobya Jenoside n'icyigengabitekerezo ya jenoside. Reba urubanza RS/CONST/0002/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/10/2012.

[16] Bisengimana yifuza ko agace k'ingingo aregera kavanwaho kugira ngo Urukiko Rwisumbuye rwa Rusizi ruzakire ubujurire bwe, runaburanishe urubanza rwe mu mizi kugira ngo azarenganurwe. Reba urubanza RS/INCONST/CIV 0001/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/11/2012, igika cya 7.

[17] Reba urubanza RS/INCONST/002/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 27/04/2012, igika cya 5.

kubera ko bari bafite ibirego bitegereje kuburanishwa mu nkiko zisanzwe. Inyungu z'urega muri izi manza zari zishingiye ku kuba hari urubanza rusanzwe uwatanze ikirego afite, agasaba Urukiko rumuburanisha kuba rutegereje guca urubanza kugira ngo abanze agaragaze ko ingingo y'Itegeko urwo Rukiko ruzashingiraho acirwa urubanza inyuranyije n'Itegeko Nshinga.

[12] Naho ikibazo cy'inyungu z'umuburanyi udafite urundi rubanza mu Rukiko rusanzwe cyangwa utaratangira kugirwaho ingaruka n'ingingo z'Itegeko aregera ko zinyuranyije n'Itegeko Nshinga cyasuzumwe mu buryo bwimbitse mu rubanza rwa Me Mugisha Richard.[18] Guhera ku gika cya 20 kugeza ku cya 32 by'urwo rubanza, uru Rukiko rwasobanuye ko kuregera itegeko ko rinyuranyije n'Itegeko Nshinga bikwiye gufatwa nk'ikibazo gikomeye kandi kigomba gukemurwa aho gufatwa nk'ikibazo kitariho, inyungu z'uwatanze ikirego zikaba zishingiye ku kuba asaba Urukiko kwemeza ko hari ingingo z'itegeko zibangamiye uburenganzira buteganywa n'Itegeko Nshinga cyangwa zituma intego igamijwe n'Itegeko Nshinga itagerwaho nyamara igomba kurengerwa. Kuba ingingo z'Itegeko riregerwa ziriho ubwabyo biheshaurega inyungu zo gutanga ikirego asaba ko zivanwaho bitabaye ngombwa gutegereza ko zimugiraho ingaruka. Mu yandi magambo, muri bene ibi birego, inyungu zishobora kuba ari iziriho cyangwa izishobora kubaho.

[13] Uru Rukiko rwasanze kandi inyungu zigomba kumvikana mu buryo bwagutse bitewe n'uko akamaro k'urubanza ruciwe kuri bene ibi birego karenga inyungu bwite z'uwatanze ikirego nk'uko bizwi mu manza zisanzwe kakagera no kuri rubanda, hakaba nta wundi wakongera kuregera izo ngingo zari zararegewe ko zinyuranyije n'Itegeko Nshinga. Iki ni nacyo cyatumye Umushingamategeko ateganya ko imanza zivanyeho ingingo z'Itegeko kubera ko zinyuranyije n'Itegeko Nshinga zitangazwa mu Igazeti ya Leta kugira ngo abaturage bose babimenyeshwe.

[14] Urukiko rurasanga iby'uko inyungu iregerwa mu manza zisaba kwemeza ko itegeko rinyunyije n'Itegeko Nshinga igomba kurebwa mu buryo bwagutse byaragarutsweho na none mu rubanza rwa Me Kabuye Ngendahayo.[19] Muri urwo rubanza, uru Rukiko rwasanze ingingo z'Itegeko ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zaregewe ko zinyuranyije n'Itegeko Nshinga zireba umuntu wese uri muri sosiyete nyarwanda kubera ko ishyingiranwa, izungura ndetse n'uburenganzira ku mutungo ntawe bikumira, bivuze ko buri munyarwanda wese harimo na Kabuye Ngendahayo, ashobora kurikoresha cyangwa rikamugiraho ingaruka. Kuba rero ari mubo itegeko rireba kandi nawe akaba ashobora kuryifashisha kabone nubwo yaba atarahura n'ikibazo ngo ingingo zaryo zimugireho ingaruka akaba aribyo bimuhesha inyungu zo kuba yaregera ko hari ingingo zaryo zinyuranyije n'uburenganzira bwe buteganywa n'Itegeko Nshinga.

[15] Mu rubanza rubanziriza urundi rwa Byansi Samuel Baker rwaciwe ku wa 10/12/2021[20] ndetse n'urwaciwe ku wa 24/12/2021,[21] uru Rukiko nyuma yo kwibutsa umurongo watanzwe mu rubanza rwa Me Mugisha Richard, rwasobanuye ko mu rwego rwo kwirinda ibirego bitari ngombwa bishobora kubangamira imikorere y'inkiko, uwatanze ikirego afite inshingano zo kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza. Rwasanze Byansi Samuel Baker yari afite umwihariko w'uko yari umunyamakuru uregera ivanwaho ry'ingingo z'amategeko yavugaga ko zibangamiye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru. Mu rubanza rwaciwe ku wa 24/12/2021, Urukiko rwasanze Itegeko riteganya ibyaha n'ibihano muri rusange rireba buri wese uri ku butaka bw'u Rwanda harimo n'abanyamakuru, bityo

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[18] Reba urubanza RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga, ku wa 18/01/2019.

[19] Reba urubanza rubanziriza urundi RS/INCONST/SPEC 00004/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/02/2022

[20] Reba urubanza RS/INCONST/SPEC 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021.

[21] Reba urubanza RS/INCONST/SPEC 00002/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2021.

ingingo zaryo avuga ko zikwiye kuvaho kuko zinyuranye n'Itegeko Nshinga zikaba zishobora kumubangamira ubu cyangwa mu bihe bizaza.

[16] Urukiko rwasanze kandi, Byansi Samuel Baker, nk'umunyamakuru w'umwuga, yari akomatanyirije hamwe inyungu rusange n'inyungu bwite zo gutanga ikirego nk'uko byasobanuwe haruguru. Ku bireba inyungu rusange, yarebewe mu kuba ingingo z'Itegeko riteganya ibyaha n'ibihano muri rusange, zireba abaturage muri rusange nawe arimo, zikaba zishobora kumubangamira mu burenganzira bwe. Naho inyungu bwite ireberwa mu kuba ari umunyamakuru w'umwuga uharanira iterambere ry'ubwisanzure bw'itangazamakuru n'amategeko arigenga aho kureberwa mu ngaruka ingingo z'amategeko yaregeraga zamugizeho. Kuba yari umunyamakuru byamuhaga umwihariko watumye muri izo manza Urukiko rubona ko amategeko aregera ko anyuranyije n'Itegeko Nshinga ari amwe mu mategeko amugenga mu mwuga we, bityo bikaba bitari ngombwa gutegereza ko abanza kumugiraho ingaruka kugira ngo yemererwe kugaragaza ko anyuranyije n'Itegeko Nshinga.

[17] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga mu gusuzuma inyungu z'urega hagomba kurebwa ibintu bikurikira, kuba hariho kimwe muri byo bikaba byihagije kugira ngo Urukiko rwemeze ko urega afite inyungu:

- Niba hari itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba urega cyangwa icyiciro abarizwamo by'umwihariko ku buryo afite inyungu ku giti cye zo gutanga ikirego. Urugero ni nk'Itegeko rireba abanyamakuru, abaganga, abarimu, n'abandi;
- Niba itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba abaturage muri rusange ku buryo rishobora kugira ingaruka ku burenganzira bwabo, ibyo bikaba aribyo bihesha umuntu uwo ari we wese rishobora kuzagiraho ingaruka inyungu zo kuriregera ko rinyuranyije n'Itegeko Nshinga;
- Niba uwatanze ikirego ari umwavoka, uyu akaba mu nyungu z'ubutabera, yemerewe gutanga ikirego mu rwego rwo guteza imbere amategeko cyangwa uburenganzira bw'abarebwa n'iryo tegeko kabone nubwo nta nyungu we ku giti cye yaba afite muri icyo kirego.

[18] Ku bireba uru rubanza, Urukiko rurasanga Murangwa Edward avuga ko ingingo z'amategeko aregera zijyanye n'ibikorwa bimwe by'iperereza, isaka, itambamira ry'ibintu cyangwa igenzura ry'itumanaho, uburyo bikorwamo bikaba bibangamiye uburenganzira bw'ibanze buteganywa n'Itegeko Nshinga harimo n'ubwo kubahiriza icyubahiro n'agaciro ka muntu no kutavogera imibereho bwite, iy'umuryango, iy'urugo rwe cyangwa ubutumwa yohererezanya n'abandi. Avuga na none ko izo ngingo ziha ububasha bw'umurengera Ubugenzacyaha n'Ubushinjacyaha kuko hari aho ziteganya ko isaka rishobora gukorwa hatabanje gutangwa urupapuro rw'isaka, ariko ko no kuba rushobora gutangwa n'Ubushinjacyaha asanga bivogera inshingano z'Ubucamanza zo kurinda uburenganzira n'ubwisanzure bwa muntu ziteganywa n'ingingo ya 43 y'Itegeko Nshinga.

[19] Hashingiwe ku bimaze gusobanurwa haruguru ndetse no ku byagaragajwe mu gika cya 17 (2), Urukiko rurasanga iyo ingingo z'Itegeko ziregerwa ziri mu rwego rw'ingingo zireba buri wese nk'uko bimeze ku ngingo ya 10, agace ka 3, a, b na c ndetse n'agace ka 5, aka 7 n'aka 8, y'Itegeko N° 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu rushizwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo; n'ingingo ya 38, iya 55, iya 56, iya 57, iya 60, iya 61 n'iya 70 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, icyo gihe bihesha uwaziregeye nk'umwe mubo zireba inyungu zo gutanga ikirego atabanje gutegereza ko we ku giti cye zimugiraho ingaruka.

[20] Urukiko rurasanga rero Murangwa Edward, nk'umwe mu barebwa n'ingingo z'Itegeko rishyiraho Urwego rw'Igihugu rushinzwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo ndetse n'iz'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha, afite inyungu zo gusaba kwemeza ko zimwe mu ngingo z'ayo mategeko zinyuranyije n'Itegeko Nshinga.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko Murangwa Edward afite inyungu yo kuregera kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga muri uru rubanza;

[22] Rwemeje ko iburanisha ry'uru rubanza rizakomeza ku itariki umuburanyi azamenyeshwa n'Ubwanditsi bw'Urukiko.