

Re NGENDAHAYO KABUYE (ADD)

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00004/2021/SC (Mukamulisa, P.J., Cyanzayire, Nyirinkwaya, Muhumuza na Karimunda, J., 18 Gashyantare 2022)]

Itegeko Nshinga – Amategeko anyuranyije n'Itegeko Nshinga – Inyungu zo gutanga ikirego – Nubwo inyungu mu birego bijyanye n'Itegeko Nshinga igomba kumvikana mu buryo bwagutse ariko uwatanze ikirego afite n'inshingano zo kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza – Avoka nk' umunyamwuga mu mategeko ashobora gutanga ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga akabikora atari kubwe ahubwo mu nyungu z'ubutabera.

Incamake y'ikibazo: Me Ngendahayo Kabuye yatanze ikirego asaba kwemeza ko ingingo ya 8 igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1o) z'Itegeko n° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye.

Avuga ko impamvu asanga izo ngingo zifite ikibazo ari uko byagaragaye ko iyo umwe mu bashyiranywe apfuye, hakaboneka abandi bana abo babyeyi badahuriyeho ndetse n'abandi bazungura muri rusange, umubyeyi usigaye yishingikiriza izo ngingo maze akikubira imitungo wenyine akigizayo abo bazungura cyane cyane iyo atabafiteho inshingano zo kubarera, hakaba n'igihe aba afite izo nshingano ariko ntazuzuze nk'uko bikwiriye bigateza amakimbirane mu muryango ndetse hakavuka imanza za hatu na hatu.

Ababuranyi babanze kujya impaka ku kibazo cyo kumenya niba urega afite inyungu zo gutanga ikirego, aho avuga ko nka Avoka afite inshingano zo guteza imbere amategeko kandi nk'umunyarwanda, abona ingingo aregera zibangamiye sosiyete n'ubwo we ku giti cye zitaramugiraho ingaruka, ariko ko hari abantu batandukanye bagiye bahura n'ibibazo bizishingiyeho bigateza amakimbirane, cyane cyane ko ibyo bihura n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza no RS/INCONST/SPEC 00002/2018/SC.

Leta y'u Rwanda nayo ivuga ko ikurikije umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza no RS/INCONST/SPEC 00002/2018/SC, isanga urega afite inyungu zo gutanga ikirego.

Incamake y'icyemezo: 1. Nubwo inyungu mu birego bijyanye n'Itegeko Nshinga igomba kumvikana mu buryo bwagutse ariko uwatanze ikirego afite n'inshingano zo kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza.

2. Avoka nk' umunyamwuga mu mategeko ashobora gutanga ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga akabikora atari kubwe ahubwo mu nyungu z'ubutabera

**Urega afite inyungu yo gutanga ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga.
Iburanisha ry'urubanza rizakomeza mu mizi.**

Amategeko yashingiweho:

Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 72.

Imanza zifashishijwe:

Urubanza Ishyaka Riharanira Demokarasi no Kurengera Ibidukikije mu Rwanda (DGPR) v. Leta y'u Rwanda RS/SPEC/0002/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/09/2015
Urubanza Re MUGISHA; N° RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019.
Re BYANSI N° RS/INCONST/SPEC 00002/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2021,
Re Byansi Samuel Baker, RS/INCONST/SPEC 0003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021

Urubanza

I. IMITERERE Y'URUBANZA

Me Ngendahayo Kabuye yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 8 igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1o) z'Itegeko n° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavugururwe mu 2015, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye.

Izo ngingo 4 urega asaba Urukiko rw'Ikirenga kwemeza ko zinyuranyije n'itegeko Nshinga, ziteye zitya:

- Ingingo ya 8 igika cya 2 iteganya ko "Iyo uburyo bw'ivangamutungo rusange ku bashakanye busheshwe kubera urupfu rw'umwe mu bari barashyingiranywe, umutungo wegukanwa n'uwapfakaye kugeza igihe izungura rikorewe",
- Iya 52, igika cya 3 iteganya ko "izungura ry'abashyingiranywe ritangira ari uko bombi bapfuye cyangwa umwe yongeye gushyingirwa, keretse iyo itegeko ribiteganya ukundi",
- Iya 75 igateganya ko "Uwapfakaye afite uburenganzira bwo kugira uruhare mu izungura ry'umutungo wasizwe n'uwo bari barashyingiranywe; Uwapfakaye uhamagawe mu izungura, azungurana mu buryo bungana n'abazungura bo ku rwego rwa mbere",
- N'ingingo ya 76 (1°) iteganya ko "Abashyingiranywe bafitanye amasezerano y'ivangamutungo rusange bazungurwa mu buryo bukurikira: iyo umwe apfuye usigaye yegukana umutungo wose akubahiriza inshingano yo kurera abana babo n'ab'uwapfuye bemewe n'amategeko".

Me Ngendahayo Kabuye avuga ko akurikije ibiteganywa n'izo ngingo zisobanuwe haruguru, abona zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavugururwe mu 2015¹, kuko zibangamiye ishyirwa mu bikorwa ry'izindi ngingo z'itegeko zirebana no kuzungura ndetse n'andi mategeko arebana n'uburenganzira ku mutungo. Avuga ko impamvu asanga izo ngingo zifite ikibazo ari uko byagaragaye ko iyo umwe mu

¹ Ingingo ya 15 iteganya ko "abantu bose bareshya imbere y'amategeko kandi barengerwa ku buryo bungana", iya 18 yo ikavuga ko "umuryango ari wo shingiro kamere ry'imbaga y'Abanyarwanda, urengerwa na Leta". Mu gika cya gatatu ikavuga ko "Leta ishyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure", naho iya 34 igateganya ko "buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi utavogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko",

bashyingiranywe apfuye, hakaboneka abandi bana abo babyeyi badahuriyeho ndetse n'abandi bazungura muri rusange, umubyeyi usigaye yishingikiriza izo ngingo maze akikubira imitungo wenyine akigizayo abo bazungura cyane cyane iyo atabafiteho inshingano zo kubarera, hakaba n'igihe aba afite izo nshingano ariko ntazuzuze nk'uko bikwiriye bigateza amakimbirane mu muryango ndetse hakavuka imanza za hatu na hatu.

██████████ Avuga kandi ko mu manza zitandukanye abo bazungura bagiye batsindwa, umupfakazi akikubira umutungo wenyine, kandi ihame ari uko abantu bareshya imbere y'amategeko, ndetse Leta akaba ariyo igomba kurengera abana, bakagira uburenganzira ku mutungo wasizwe n'umubyeyi wabo no gukumira amakimbirane mu muryango.

██████████ Iburanisha ry'uru rubanza ryabaye ku wa 13/01/2022, Me Ngedahayo Kabuye, yunganiwe na Me Umulisa Kayigamba Alice afatanyije na Me Serugo Jean Baptiste, naho Leta y'u Rwanda ihagarariwe n'intumwa zayo, Me Kayitesi Petronille hamwe na Me Ntwali Emile.

██████████ Iburanisha ritangiye Urukiko rwabanje gufata icyemezo ku busabe rwashyikirijwe n'Umuryango Nyarwanda uharanira uburenganzira bw'umwana n'umugore (HAGURUKA) uhagarariwe na Umuhoza Ninette, ukaba warasabye kwemererwa kuba inshuti y'Urukiko (Amicus Curiae) muri uru rubanza. Urukiko rwasanze nta kintu gishya kivugwa n'uwo Muryango gitandukanye n'ibyagaragajwe n'umwe mu baburanyi cyatuma wemererwa kuba inshuti y'Urukiko kugira ngo uzarwunganire mu guca urubanza. Rwabishingiye ku murongo rwatanze ku kibazo nk'iki, aho rwasobanuye ko kugira ngo umuntu cyangwa umuryango bemererwa kuba Inshuti y'Urukiko, hagomba kuba hari icyo bagaragaza ko barwunganira kandi gitandukanye n'ibivugwa n'ababuranyi². Rwanzuye ko Umuryango HAGURUKA utemerewe kuba Inshuti y'Urukiko muri uru rubanza.

██████████ Iburanisha ryarakomeje, ababuranyi bajya impaka ku kibazo cyo kumenya niba Me Ngedahayo Kabuye afite inyungu zo gutanga ikirego kirebana no kwemeza ko ingingo ya 8 igika cya 2, iya 52 igika cya 3, iya 75 n'iya 76 (1^o) z'Itegeko n° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba Me Ngedahayo Kabuye afite inyungu zo gutanga ikirego

██████████ Me Ngedahayo Kabuye yahawe umwanya wo gusobanura inyungu afite muri uru rubanza, avuga ko nka Avoka afite inshingano zo guteza imbere amategeko kandi nk'umunyarwanda, abona ingingo aregera zibangamiye sosiyete n'ubwo we ku giti cye zitaramugiraho ingaruka, ariko ko hari abantu batandukanye bagiye bahura n'ibibazo bizishingiyeho bigateza amakimbirane. Abishingiraho avuga ko afite inyungu yo gusaba ko ingingo z'itegeko ryavuzwe haruguru zihindurwa, cyane cyane ko ibyo avuga bihura n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza no RS/INCONST/SPEC 00002/2018/SC, aho mu gika cya 26 rwavuze ko inyungu ya Avoka ireberwa ku mwuga we kandi ko itagarukira k'uwatanze ikirego gusa ahubwo ko ireba abarebwa n'itegeko bose.

██████████ Me Kayitesi Petronille na Me Ntwali Emile bahagarariye Leta y'u Rwanda nabo bavuze ko bakurikije umurongo watanze n'Urukiko rw'Ikirenga mu rubanza no RS/INCONST/SPEC 00002/2018/SC, mu gika cya 30 n'icya 31, babona Me Ngedahayo Kabuye afite inyungu zo gutanga ikirego.

UKO URUKIKO RUBIBONA

² Reba urubanza RS/SPEC/0002/15/CS rwaciye n'Urukiko rw'Ikirenga ku wa 09/09/2015 haburana Democratic Green Party of Rwanda, igika cya 5.

██████ Ingingo ya 72 igika cya mbere y'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya 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 .

██████ Ikibazo cy'inyungu z'utanga ikirego gisaba kwemeza ko ingingo z'Itegeko runaka zinyuranye n'Itegeko Nshinga uru Rukiko rwagisuzumye mu manza zitandukanye harimo n'urwa Me Mugisha Richard rwanagarutsweho n'ababuranyi bombi mu iburanisha, aho rwasanze inyungu mu rubanza zigamije kwerekana ko uwatanze ikirego hari uburenganzira ashaka guheshwa n'icyemezo cy'Urukiko, cyangwa akaba ashaka ko Urukiko hari ibyo rwemeza bimufitiye akamaro. Rwanasobanuye ko urega asabwa kuba afite inyungu mu kirego yatanze kugira ngo bikumire abashobora gutanga ibirego bagamije kwimenyekanisha cyangwa kumenyekanisha ibikorwa byabo ndetse n'abashobora gushaka guheshwa uburenganzira bugenewe abandi³.

██████ Urukiko rw'Ikirenga rwakomeje ruvuga ko ku bireba ibirego bijyanye n'Itegeko Nshinga, inyungu igomba kumvikana mu buryo bwagutse, cyane cyane mu gihugu nk'u Rwanda kikiri mu nzira y'iterambere aho abaturage batarasobanukirwa uburenganzira bwabo bagenerwa n'Itegeko Nshinga, bakaba bakeneye gufashwa kubugeraho hifashishijwe inkiko⁴.

██████ Uyu murongo ni nawo wagarutsweho mu manza za BYANSI Samuel Baker, ariko Urukiko rwongeraho 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 rubanza⁵, akerekana inyungu bwite afite cyangwa yavutswa mu buryo butaziguye n'itegeko asaba ko ryakurwaho⁶.

██████ Muri uru rubanza, Me NGENDA HAYO KABUYE, asaba Urukiko rw'Ikirenga kwemeza ko ingingo zavuzwe haruguru hari uburenganzira zishobora kuba zibangamiye burimo ubwo kuba abana basizwe n'umwe mu bashakanye babuzwa uburenganzira ku mutungo n'umubyeyi utarababyaye, bakavutswa uburenganzira bwo kuzungura umubyeyi wabo akimara kwitaba Imana, ndetse hakaba hari ubwo umwe mu bashakanye wasigaye atubahiriza inshingano zo kwita kuri abo bana, ko ibyo bigaragaza ko abo bantu batareshya imbere y'amategeko, kandi itegeko riteganyaga ko bagomba kureshya .

██████ Urukiko rushingiye ku kuba Itegeko n°27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ari itegeko rireba umuntu wese uba muri sosiyete nyarwanda, kubera ko ishyingiranywe, izungura ndetse n'uburenganzira ku mutungo ntawe bikumira, bivuze ko buri munyarwanda wese ashobora kurikoresha kandi rigakurikizwa na buri wese mu byo ryateganyijwe, bikaba byumvikana ko uretse kuba iryo tegeko rireba abanyarwanda muri rusange, rinareba Me NGENDA HAYO KABUYE watanze iki kirego.

██████ Urukiko rusanga rero Me NGENDA HAYO KABUYE afite inyungu zo gusaba kwemeza ko zimwe mu ngingo z'itegeko ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura zinyuranyije n'Itegeko Nshinga nk'umwe mu bo rireba kuko nawe ashobora kuryifashisha kabone n'ubwo yaba atarahura n'ikibazo ngo zimubangamire.

³ Reba urubanza n° RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019, igika cya 19.

⁴ Reba urubanza n° RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019, igika cya 21.

⁵ Reba urubanza n° RS/INCONST/SPEC 0002/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2021, igika cya 14.

⁶ Reba urubanza n° RS/INCONST/SPEC 0003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021, igika cya 14.

■■■■ Byongeye kandi, Urukiko rusanga Me NGEHAYO KABUYE nka Avoka ufite uruhare muri sosiyete rwo guteza imbere amategeko, afite inyungu zo gutanga ikirego gisaba kwemeza ko zimwe mu ngingo z’Itegeko n°27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y’umutungo w’abashyiranywe impano n’izungura zinyuranyije n’itegeko Nshinga kabone n’ubwo byaba bigaragara ko nta nyungu zihariye agifitemo. Uyu murongo ni nawo wemejwe mu rubanza rwa MUGISHA Richard.⁷

III. ICYEMEZO CY’URUKIKO

■■■■ Rwemeje ko Me Ngendahayo Kabuye afite inyungu yo gutanga ikirego gisaba kwemeza ko ingingo z’itegeko zinyuranyije n’Itegeko Nshinga.

■■■■ Rutegetse ko iburanisha ry’urubanza rizasubukurwa kuwa 12/04/2022 saa mbili n’igice za mu gitondo.

⁷ Reba urubanza n° RS/INCONST/SPEC 00002/2018/SC rwavuzwe haruguru.