UBUSHINJACYAHA v RWAGITERA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00177/2018/CA (Kanyange, P.J.) 21 Gashyantare 2020]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Ibimenyetso mu manza nshinjabyaha – Ibimenyetso bidashidikanywaho – Ushinjwa aba umwere iyo Ubushinjacyaha budashoboye kugaragaza ibimenyetso bidashidikanywaho bimushinja.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Ubushinjacyaha burega Rwagitera icyaha cyo gusambanya umwana we w'umukobwa witwa MR, buvuga ko ku itariki ya 25/02/2016 ubwo yari amuherekeje agiye kugura itabi ari nijoro bageze mu rutoki aramusambanya. Rwagitera yarabajijwe ahakana icyaha, no mu miburanire ye akomeza kugihakana. Urukiko rwaciye urubanza ruhamisha icyaha Rwagitera, rumuhanisha igifungo cya burundu y'umwihariko.

Rwagitera yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yahamijwe icyaha arengana. Urukiko ruca urubanza ruvuga ko ubujuririre bwe ntashingiro bufite, ruhamishaho imikirize y'Urukiko rw'isumbuye.

Rwagitera nanone ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ikirenga, nyuma y'ivugururwa ry'urwego rw'ubucamanza urubanza rwoherezwa mu Rukiko rw'Ubujurire. Rwagitera avuga ko impamvu yamuteye kujurira, ari uko nta cyaha yakoze, ko ijoro bavuga ko yasambanyije umwana we bavanye kugura itabi saa munani z'ijoro, ataribyo kuko atigeze ajyayo, ahubwo ko umwana yamubeshyeye kubera ko yamwatse umugabane we akawumwima. Ku byerekeye abatangabuhamya bavuze ko yajyanye n'umwana we kugura itabi, avuga ko mu bamushinja harimo umugore we kandi icyo bapfa akaba ari uko yagurishije isambu, nanone akiregura avuga ko n'ubuhamya bwa Hashoborimana butashingirwaho kuko atigeze ajya kugura itabi n'amasaha bivugwa ko yagiriyeho kugura itabi akaba atera urujijo, ikindi akaba atarabonye uyu mwana asambanywa cyangwa ngo yumve atabaza, hakaba nta n'ikigaragaza ko yari umucuruzi w'itabi. Ku buhamya bwa Kayitesi, avuga ko nabwo butashingirwaho kuko nta n'ikigaragaza ko yari yaraye iwe kugira ngo amenye ibyahabereye saa munani z'ijoro.

Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire za Rwagitera zidakwiye guhabwa ishingiro kuko hari abatangabuhamya bamushinja harimo aho yaguze itabi, imvugo z'umwana wasobanuye uburyo yasambanyijwe, imvugo za nyirasenge witwa Kayitesi imvugo y'umugore wa Rwagitare utari nyina w'uwomwana ndetse na raporo ya muganga. Avuga kandi ko atari ihame ko usambanyijwe n'uwanduye SIDA nawe ahita ayandura, naho ku byerekeranye na raporo ya muganga ushinjwa avuga ko itatanzwe ako kanya, Ubushinjacyaha avuga ko icyangombwa ari uko muganga yatanze raporo yari yasabwe kuko ntawari wamubwiye kuyitanga ku isaha runaka, asoza asaba ko ingingo z'ubujurire zitahabwa agaciro, hakagumaho igihano yahawe mu rubanza rwajuririwe.

Incamake y'icyemezo: 1. Ushinjwa aba umwere iyo Ubushinjacyaha budashoboye kugaragaza ibimenyetso bidashidikanywaho bimushinja, bityo Rwagitera akaba atahamwa n'icyaha igihe cyose Ubushinjacyaha butabashije kugaragaza ibimeneyetso bimushinja bidashidikanywaho.

Ubujurire bufite ishingiro
Ushinjwa adahamwa n'icyaha akurikiranyweho kubera ugushidikanya.

Amategeko yashyingiweho:

Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 107 na 111

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:

Henri-D-Bosly & Damien Vandermeersch, Droit de la Procédure Pénale, 2ème édition, 2001, p.929

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Ubushinjacyaha burega Rwagitera Célestin icyaha cyo gusambanya umwana we w'umukobwa witwa Maniraguha Rebecca wavutse mu mwaka wa 2000, buvuga ko ku itariki ya 25/02/2016 ubwo yari amuherekeje agiye kugura itabi ari nijoro bageze mu rutoki aramusambanya. Rwagitera Célestin yarabajijwe ahakana icyaha, no mu miburanire ye akomeza kugihakana.

[2] Mu rubanza RP 0143/16/TGI rwaciwe ku wa 18/05/2016, Urukiko Rwisumbuye rwa Ngoma rwemeje ko Rwagitera Célestin ahamwa n'icyaha aregwa, rumuhanisha igifungo cya burundu y'umwihariko.

[3] Rwagitera Célestin yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yahamijwe icyaha arengana, mu rubanza RPA 00017/17/HC/RWG rwaciwe ku wa 29/06/2017, urwo Rukiko rwemeza ko ubujurire bwa Rwagitera Célestin nta shingiro bufite, ruhamishaho imikirize y'urubanza rwajuririwe.

[4] Rwagitera Célestin yajuririye Urukiko rw'Ikirenga, ubwo bujurire bwimurirwa mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

[5] Urubanza rwaburanishijwe mu ruhame ku itariki ya 25/09/2018, Rwagitera Célestin yunganiwe na Me Gatarayiha Simon Pierre, naho Ubushinjacyaha buhagarariwe na Habineza Jean Damascène, Umushinjacyaha ku Rwego rw'Igihugu, wahise abyutsa inzitizi y'iburabubasha bw'Urukiko rwajuririwe ishingiye ku kuba Rwagitera Célestin yaratsinzwe mu nkiko ebyiri za mbere ku mpamvu zimwe, ku wa 18/10/2018 Urukiko rwemeza ko iyo nzitizi nta shingiro ifite, rutegeka ko urubanza ruzaburanishwa mu mizi ku itariki ya 07/11/2018.

[6] Uwo munsi ababuranyi bitabye Urukiko, Rwagitera Célestin yunganiwe na Me Gatarayiha Simon Pierre, Ubushinjacyaha buhagarariwe na Rudatinya N.Gaspard, Umushinjacyaha ku Rwego rw'Igihugu. Nyuma yo kumva imiburanire y'impande zombi, Urukiko rwemeje ko mbere yo gufata icyemezo, hatumizwa Nyirahakorimana Claudine umugore wa Rwagitera Célestin, umwana wahohotewe, na Hashoborimana Gérard kugira ngo Urukiko ruzagire ibyo rubabaza, n'ubwanditsi bw'urukiko bugasaba Rwanda Biomedical Center (RBC) kugena umuganga usobanukiwe ibyerekeranye n'indwara ya SIDA kugira ngo nawe azagire ibyo asobanurira Urukiko, iburanisha rishyirwa ku wa 5/12/2018.

[7] Mubo Urukiko rwari rwifuje kumva kuri uwo munsi hitabye Dr Nsanzimana Sabin, impuguke ya RBC, atanga ibisobanuro ku byerekeranye n'uburyo SIDA yandura no ku birebana na raporo yakozwe na muganga wasuzumye umwana wahohotewe, Urukiko rupfundikira urubanza, ruvuga ko ruzasomwa ku wa 21/12/2018, ariko ntirwasomwa ahubwo Urukiko rutegeka ko Nyirahakorimana Claudine, Maniraguha Rebecca na Hashoborimana Gérard bazarwitaba ku itariki ya 23/01/2019.

[8] Urubanza rwongeye guhamagarwa kuburanishwa ku wa 25/03/2019, Urukiko rusanga kuba abatangabuhamya bahamagawe inshuro ebyiri ntibitabe kandi amahamagara yarabagezeho, rugomba guca urubanza rushingiye ku bimenyetso biri muri dosiye, isomwa ry'urubanza rishyirwa ku wa 26/04/2019, ariko hagati aho Umucamanza wari waburanishije urubanza yimurirwa mu rundi Rukiko, bituma urubanza ruhabwa indi nteko, urubanza rwongera kuburanishwa ku wa 22/01/2020, Rwagitera Célestin yunganiwe na Me Gatarayiha Simon Pierre, Ubushinjacyaha buhagarariwe na Rudatinya N.Gaspard, Umushinjacyaha ku Rwego rw'Igihugu.

II.IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO

Kumenya niba hari ibimenyetso bidashidikanywaho byashingiweho mu guhamya icyaha Rwagitera Célestin.

[9] Rwagitera Célestin avuga ko impamvu yamuteye kujurira, ari uko nta cyaha yakoze, ko ijoro bavuga ko yasambanyije umwana we bavanye kugura itabi saa munani z'ijoro, ataribyo kuko atigeze ajyayo, ahubwo ko umwana yamubeshyeye kubera ko yamwatse umugabane we akawumwima. Ku byerekeye abatangabuhamya bavuze ko yajyanye n'umwana we kugura itabi, Rwagitera Célestin avuga ko mu bamushinja harimo umugore we Nyirahakorimana Claudine, icyo bapfa akaba ari uko yagurishije isambu ntiyabyishimira kuko yavugaga ko amaze ibintu kandi afite ubwandu bwa SIDA, ajya kuzana uwo mwana kuko yarerewe kwa nyirasenge, bagira ngo amuhe umugabane maze arabyanga, bahita bacura umugambi wo kumubeshyera.

[10] Rwagitera Célestin akomeza avuga ko indi mpamvu yatumye umugore we amushinja, ari uko bari baragiranye ibibazo kuko yamufashe amuca inyuma akamutwikira imyenda, uwo basambanaga akaba ari Hashoborimana Gérard umushinja ko yasambanyije umwana we bavuye kugura itabi iwe kandi atarigeze ahagera. Anavuga ko ubuhamya bwa Kayitesi akaba na nyirasenge w'umwana nawe butari gushingirwaho kuko batari baturanye.

[11] Rwagitera Célestin avuga ko indi mpamvu y'ubujurire ari uko yasabye ko umwana apimwa bakareba niba yaramwanduje Sida ntibikorwe kandi iyo amusambanya yari kumwanduza Sida byanze bikunze kuko ayirwaye.

[12] Me Gatarayiha Simon Pierre avuga ko Rwagitera Célestin yagaragaje icyo yapfaga n'umugore we, bivuze ko ubuhamya bwe nta gaciro bwari guhabwa cyane cyane ko yatinye no kuza imbere y'Urukiko kuko azi neza ko amubeshyera. Akomeza avuga ko n'ubuhamya bwa Hashoborimana Gérard butashingirwaho kuko Rwagitera yavuze ko atigeze ajya kugura itabi n'amasaha bivugwa ko yagiriyeho kugura itabi akaba atera urujijo, ikindi akaba atarabonye uyu mwana asambanywa cyangwa ngo yumve atabaza, hakaba nta n'ikigaragaza ko yari umucuruzi w'itabi. Ku buhamya bwa Kayitesi, avuga ko nabwo butashingirwaho kuko nta n'ikigaragaza ko yari yaraye kwa Rwagitera kugira ngo amenye ibyahabereye saa munani z'ijoro. Anavuga ko n'ibyavuzwe n'umwana bitafatwaho ukuri kuko yari afitanye ikibazo na se cyo kuba yaramyimye umugabane, Ubushinjacyaha bukaba bwari gushaka ibindi bimenyetso.

[13] Avuga kandi nta kuntu Rwagitera yari gusambanya umwana ntamwanduze bitewe n’uko mu kumusambanya akomereka, ko ibyo muganga yavuze ko bibaho ko umuntu urwaye Sida yasambanya umuntu ntamwanduze Urukiko arirwo rwazabisuzuma rukareba niba bifite ishingiro.

[14] Uhagarariye Ubushinjacyaha avuga ko impamvu z’ubujurire za Rwagitera zidakwiye guhabwa ishingiro kuko hari abatangabuhamya bamushinja harimo aho yaguze itabi, imvugo z’umwana wasobanuye uburyo yasambanyijwe, imvugo za nyirasenge witwa Kayitesi, imvugo y’umugore wa Rwagitare utari nyina w’uwo mwana ndetse na raporo ya muganga. Akomeza avuga ko umwana yasobanuye uburyo Rwagitera yamusambanyije bavuye kugura itabi nijoro, imvugo y’umwana ikaba ihura n’ibisobanurwa na Hashoborimana Gérard wavuze ko Rwagitera yazanye n’umwana kugura itabi, bakamukomangira akabyuka akaribaha, bikanashimangirwa n’ibyavuzwe n’umugore wa Rwagitera yuko yavuye mu rugo ari kumwe n’uwo mwana bagiye kugura itabi, hakaba n’undi mutangabuhamya witwa Nsengiyumva Jean Pierre uvuga ko yahuye na mubyara we akamubwira ko yumvise ko Maniraguha Rebecca yasambanyijwe na se.

[15] Akomeza asobonura ko ibivugwa na Rwagitera Célestin ko Hashoborimana Gérard yamubeshyeye kubera ko yamufashe asambanya umugore we ataribyo, kuko atigeze atabaza ubuyobozi ngo bubimenye bubikorere raporo, akaba abivuga mu magambo nta kimenyetso abifitiye, ikindi akaba ari uko mu Rukiko Rwisumbuye no mu Rukiko Rukuru, Rwagitera Célestin yavuze ko icyo apfa n’umugore we ari imyenda ye yatwitse nyamara mu mwanzuro we w’ubujurire avuga ko bapfuye umurima yari yagurishije batabyumvikanyeho, ibi bikaba bigaragaza ko ahindura imvugo mu rwego rwo guhunga icyaha. Anavuga ko ntacyabuza ko imvugo y’umwana wahohotewe ihabwa agaciro muri uru rubanza nk’uko n’Urukiko rw’Ikirenga rwabyemeje mu rubanza RPAA 0012/08/CS rw’Ubushinjacyaha na Hakizimana Servérien rwaciwe ku itariki ya 26/11/2010, naho iby’amakimbirane bari bafitanye aturuka ku kuba yaramwimye umunani bikaba bitahabwa agaciro kuko nta bimenyetso byabyo bihari.

[16] Avuga kandi ko atari ihame ko usambanyijwe n’uwanduye SIDA nawe ahita ayandura, naho ku byerekeranye na raporo ya muganga Me Gatarayiha Simon Pierre avuga ko itatanzwe ako kanya, Uhagarariye Ubushinjacyaha avuga ko icyangombwa ari uko muganga yatanze raporo yari yasabwe kuko ntawari wamubwiye kuyitanga ku isaha runaka, asoza asaba ko ingingo z’ubujurire za Rwagitera Célestin zitahabwa agaciro, hakagumaho igihano yahawe mu rubanza rwajuririwe.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 107 y’Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha iteganya ko "Ubushinjacyaha, uwakorewe icyaha cyangwa se abamufiteho uburenganzira iyo baregeye indishyi z’akababaro cyangwa biregeye umuburanyi, ni bo bagomba gutanga ibimenyetso byemeza icyaha" . Naho ingingo ya 111 y’iryo Tegeko iteganya ko "Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze".

[18] Imikirize y’urubanza rwajuririwe igaragaza ko Rwagitera Célestin yahamijwe n’Urukiko Rukuru, Urugereko rwa Rwamagana, icyaha cyo gusambanya umwana, ahanishwa igifungo cya burundu y’umwihariko ari nacyo yari yahanishijwe n’Urukiko Rwisumbuye rwa Ngoma, hashingiwe ku bimenyetso byatanzwe n’Ubushinjacyaha birimo imvugo y’umwana we Maniraguha Rebecca umushinja ko yamusambanyije, imvugo z’abatangabuhamya ndetse na raporo ya muganga,

ariko Rwagitare Célestin akaba yarakomeje guhakana icyaha kuva yatangira gukurikiranwa ndetse n'imbere y'Urukiko rw'Ubujurire akaba yarakomeje kugihakana.

[19] Urukiko rurasanga mu guhamya icyaha Rwagitera Célestin, inkiko zombi zarashingiye ku kuba Maniraguha Rebecca amushinja ko yamusambanyije, ariko uburyo asobanura uko byagenze hakaba harimo kwivuguruza, kuko abazwa mu Bugenzacyaha (C6-C9) yasobanuye ko hari saa 03h00 z'ijoro, se Rwagitera Célestin aramubwira ngo amuherekeze bajye kugura itabi, mu kugaruka bageze mu rutoki amutera umutego yikubita hasi ahita amusambanya, arangije kumusambanya ahita ajya kwa se wabo (Papa mudogo), uyu ngo amubwira gusubira mu rugo akambara imyenda myiza akabona kumujyana kwa muganga. Maniraguha Rebecca avuga ko ari ko byagenze, ko nyuma yo guhindura imyenda yagiye kureba se wabo ahita amujyana kwa muganga.

[20] Urukiko rurasanga uwitwa Nsengiyumva Jean Pierre, bigaragara ko ari we se wabo wa Maniraguha Rebecca harebwe umwirondoro we n'uwa Rwagitera Céléstin,[1] abazwa mu Bugenzacyaha (C10-C12), yarasobanuye ko yahuye na mubyara we witwa Kamana Dativa ari kumwe na Maniraguha Rebecca, bamubwira ko uyu yasambanyijwe na se Rwagitera Célestin maze ahita amujyana kwa muganga ako kanya, iyi mvugo ikaba inyuranye cyane n'iya Maniraguha Rebecca uvuga ko se yamusambanyije saa 03h00 zo mu rukererera, arangije ahita ajya kwa se wabo, bivuze ko bwari butaracya.

[21] Urukiko rurasanga kandi Nyirahakorimana Claudine, umugore wa Rwagitera Célestin, ubwo yabazwaga mu Bugenzacyaha yavuze ko umugabo we yatashye bwije nka 01h00 amusaba amafaranga yo kujya kugura itabi amubwira ko ntayo afite, abyutsa Maniraguha Rebecca ngo amuherekeze bajye kurigura, bavuyeyo abona umwana yahindutse, se yamubaza ikintu agahigima, bukeye bigeze nka 7h00 za mu gitondo amubwira ko se yamusambanyije, ibi nabyo bikaba binyuranye n'ibyo Maniraguha Rebecca yavugiye mu Bugenzacyaha ko se akimara kumusambanya batatahanye ahubwo yahise ajya kwa se wabo.

[22] Ku birebana na raporo ya muganga, Urukiko rurasanga nubwo inkiko zombi zemeje ko igaragaraza ko Maniraguha Rebecca yasambanyijwe, iyo uyisesenguye usanga iterekana ko hari igikorwa icyo ari cyo cyose cyaba cyaramuhungabanyije ku gitsina, kuko kuba igaragaza ko mu gitsina cye habasha kwinjiramo urutoki runini (1 *big finger*), ahaba akarangabusugi naho hakaba habasha kwinjira urutoki rumwe (*admitting one finger*), ataricyo cyerekana ko yasambanyijwe, kuko na muganga wakoze iyo raporo, nta mwanzuro yakuye muri ibyo yabonye, ngo avuge ko byaba byaratewe n'uko yasambanyijwe, cyane cyane ko muganga Nsanzimana Sabin, impuguke ya RBC ku byerekeranye n'indwara ya SIDA, yasobanuriye Urukiko ko kuvaho kw'akarangabusugi bitavuze byanze bikunze ko byatewe n'imibonano mpuzabitsina, kuko bishobora guterwa n'izindi mpamvu, nka siporo,imirimo itandukanye,n'ibindi.

[23] Urukiko rurasanga hari urujijo mu mikorere y'icyaha Rwagitera Célestin ashinjwa kuko ibyo abatangabuhamya bose bavuze aribyo babwiwe na Maniraguha Rebecca, kandi bikaba bivuguruzanya n'imvugo ze, bityo hakaba nta kigaragaza mu buryo budashidikanywaho ko koko kiriya cyaha cyabayeho ngo rube rwabishingiraho rwemeza ko Rwagitera Célestin yasambanyije Maniraguha Rebecca, na raporo ya muganga, yakozwe umunsi Maniraguha Rebecca avuga ko yasambanjijweho[2], ikaba itagaragaza ko nibura ku gitsina cye hari ikimenyetso cy'uko yasambanyijwe, kandi avuga ko se mu kumusambanya yamugiyeho inshuro ebyiri, mu gihe iyo raporo igaragaza ko ku rwinjiriro rw'igitsina ari hazima. Abahanga mu mategeko nabo bavuga ko

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[1] Bombi ni bene Gakwandi na Nyirakimonyo

[2]Avuga ko yasambanyijwe mu rukerera rwo ku wa 25/02/2016, asuzumwa ku wa 26/02/2016

umucamanza adashobora kwemeza ko umuntu ahamwa n‘icyaha atabanje kugaragarizwa ibimenyetso bidashidikanywaho kandi byagiweho impaka mu iburanisha ko icyaha yagikoze, bisesenguwe mu bushishozi bwe[3].

[24] Hashingiwe ku byasobanuwe haruguru, Urukiko rurasanga ibimenyetso Ubushinjacyaha bwatanze ari nabyo byashingiweho n’inkiko zabanje, bitafatwa nk’ibimenyetso simusiga ku buryo budashidikanywaho (*au-delà de tout doute raisonnable*) byatuma hemezwa ko Rwagitera Célestin yasambanyijie Maniraguha Rebecca, cyane cyane ko yahamagajwe inshuro ebyiri hamwe na Nyirahakorimana Claudine na Hashoborimana Gérard kugira ngo Urukiko rugire ibyo rubasobanuza ariko ntibitabe kandi hamagara zarabagezeho, bityo hakaba hari ugushidikanya ko RWAGITERA Célestin yaba yarakoze icyaha yahamijwe n’Inkiko zabanje, akaba agomba kugihanagurwaho hashingiwe ku ngingo ya 111 y’Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru.

III. ICYEMEZO CY’URUKIKO

[25] Rwemeje ko ubujurire bwa Rwagitera Célestin bufite ishingiro;

[26] Rwemeje ko urubanza RPA 00017/17/HC/KIG, rwaciwe n’Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 29/06/2017 ruhindutse kuri byose;

[27] Rwemeje ko Rwagitera Célestin adahamwa n’icyaha akurikiranyweho kubera ugushidikanya, akaba agomba kurekurwa;

[28] Rutegetse ko amagarama y’urubanza aherera ku Isanduku ya Leta.

[3] Henri-D-Bosly & Damien Vandermeersch, Droit de la Procédure Pénale, 2ème édition, 2001, p.929 : « Le juge ne peut déclarer un prévenu coupable que s’il a acquis l’intime conviction de sa culpabilité au-delà de tout doute raisonnable sur la base d’éléments de preuve qui lui ont été régulièrement produits et soumis à la contradiction et qu’il apprécie souverainement »