UBUSHINJACYAHA v MUSANGAMFURA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00381/2020/CA, (Kaliwabo, P.J.) 18 Werurwe 2022]

Amategeko agenga imanza nshinjabyaha – Igihano – Impamvu nkomezacyaha – Igihe icyaha cyakoranywe ubugome bukabije byaba impamvu yo kutagabanyirizwa igihano.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha bukurikiranyeho Musangamfura icyaha cy'ubwicanyi, buvuga ko kuwa 02/01/2017 saa 06h00, Musangamfura yishe uwitwa Mushimiyimana, umugore babyaranye abana batanu. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cy'ubwicanyi rumuhanisha igihano cy'igifungo cya burundu.

Uregwa yajuririye Urukiko Rukuru avuga ko yahanishijwe igihano kiremereye kandi yaraburanye yemera icyaha, asaba ko byakosorwa agahabwa igihano cyoroheje. Urwo Rukiko rwaciye urubanza rwemeza ko igihano cy'igifungo cya burundu yahanishijwe n'Urukiko Rwisumbuye rwa Gasabo kigumyeho.

Yarongeye ajuririra Urukiko rw'Ubujurire asaba ko rwamugabanyiriza igihano kuko yakoze icyaha atabigambiriye, ko kandi yarangije kumva ububi bw'icyaha yakoze akaba atazasubira gukora icyaha ukundi. Avuga kandi ko icyaha cyamugwiririye kandi ko acyicuza bityo ko yahanishwa igifungo cy'imyaka 10 mu mwanya w'igifungo cya burundu yakatiwe.

Ubushinjacyaha bwo buvuga ko ubujurire nta shingiro bufite kuko avuga ko yemera icyaha nyamara agahisha imikorere yacyo kuko icyaha kitamugwiririye ahubwo ko yagambiriye icyaha, buvuga kandi ko niyo yaba yemera icyaha ku buryo bwuzuye, bitatuma agabanyirizwa igihano, ko ahubwo ubugome yagikoranye agatesha umubyeyi kurera abana, agomba kugumishwa ku gifungo cya burundu yahawe.

Incamake y'icyemezo: 1. Ubugome bukabije bwakoranywe icyaha butuma hatabaho kugabanya igihano, bityo igihano Musangamfura yahanishijwe kigumyeho.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:
Itegeko Ngenga N° 01/2012 ryo kuwa 02/5/2012 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 77 n'iya 140.

Imanza zifashishijwe:
Ubushinjacyaha v. MUKANKUSI Victoire, RPA 0246/09/CS, rwaciwe n'Urukiko Rw'Ikirenga kuwa 14/12/2012.

Ibitecyerezo by'abahanga:

Cesare Beccaria, Des peines et des delits, editions du Boucher, paris, 2002 p.76 du livre numerique, consulte online sur www.le boucher.com/pdf/Beccaria/Beccaria.pdf.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha bukurikiranyeho Musangamfura Damien icyaha cy'ubwicanyi, buvuga ko kuwa 02/01/2017 saa 06h00, Musangamfura Damien yishe uwitwa Mushimiyimana Marie, umugore babyaranye abana batanu.

[2] Ku wa 29/06/2018 Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza RP 00099/2018/TGI/GSBO, rwemeza ko Musangamfura Damien ahamwa n'icyaha cy'ubwicanyi cyakorewe Mushimiyimana Marie, rushingiye ku mvugo ya Musangamfura Damien wemeye ko ari we wamwishe, imvugo y' umwana we bavanye ku Gisenyi wemeje ko icyuma ise yicishije nyina yakivanye kuri Mahoko kandi ko atari ubwa mbere ashatse kumwica hamwe n'imvugo z'abatangabuhamya bemeje ko yashatse kwica umugore we inshuro nyinshi ntabigereho, rumuhanisha igihano cy'igifungo cya burundu.

[3] Musangamfura Damien yajuririye Urukiko Rukuru avuga ko yahanishijwe igihano kiremereye kandi yaraburanye yemera icyaha, asaba ko byakosorwa agahabwa igihano cyoroheje.

[4] Mu rubanza RPA 00523/2019/HC/KIG rwaciwe kuwa 20/12/2019, Urukiko Rukuru rumaze kumva imiburanire y'impande zombi no gusesengura byimbitse impamvu z'ubujurire za Musangamfura Damien rwasanze imbabazi asaba atazihabwa kuko icyaha yakoze cyateje ingaruka zikomeye ku muryango we, abana basigara bonyine. Bityo rwemeza ko igihano cy'igifungo cya burundu yahanishijwe n'Urukiko Rwisumbuye rwa Gasabo kigumyeho.

[5] Musangamfura Damien yajuririye Urukiko rw'Ubujurire asaba ko rwamugabanyiriza igihano kuko yakoze icyaha atabigambiriye, ko kandi yarangije kumva ububi bw'icyaha yakoze akaba atazasubira gukora icyaha ukundi.

[6] Ubushinjacyaha buvuga ko ubujurire bwa Masngamfura nta shingiro bufite kuko atemera icyaha ku buryo bwuzuye kandi ko yakoranye icyaha ubugome bukabije.

[7] Urubanza rwaburanishijwe ku wa 01/3/2022 Musangamfura Damien yitabye yunganiwe na Me Ruganza Bin Seba naho ubushinjacyaha buhagarariwe na Mukunzi Faustin, Umushinjacyaha ku Rwego rw'Igihugu.

[8] Muri uru rubanza, Uru rukiko rurasuzuma niba Musangamfura Damien yagabanyirizwa igihano kubera ko yemera icyaha

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Kumenya niba Musangamfura Damien yagabanyirizwa igihano yahawe kubera ko yemera icyaha.

[9] Musangamfura Damien mu mwanzuro we avuga ko ubujurire bwe bugamije kugaragaza ukuri ku cyaha yemera cyo kwica Mushimiyimana Marie (umugore babanaga batarasezeranye) amuteye icyuma mu gatuza agwa aho, akaba asaba kugabanyirizwa igihano kugira ngo ajye kurera impfubyi zasigaye zonyine.

[10] Mu iburanisha ryo kuwa 01/3/2022 yasobanuye imikorere y'icyaha avuga ko yavuye i Gisenyi n'abana 2 babanaga aje gusangira iminsi mikuru na Mushimiyimana aho yabanaga n'abandi bana 3 ngo bwi je ajya ku icumbi kuko inzu umugore yabagamo yari ntota. Avuga ko yageze ku icumbi umugore akamuhamagara amubwira ko yibagiwe imfunguzo, ngo yaje kuzifata mu gitondo cya kare, umugore amukubita urushyi rwatumye agwa mu ibase irimo ibyombo byo mu gikoni ngo yazanzamutse afata icyuma kuko aricyo cyari hafi akimutera mu mutima atareba neza ahita apfa. Yakomeje avuga ko nawe yahiye ubwoba agashaka kwitemesha icyuma ngo yiyahure, abantu baratabara.

[11] Yasobanuye ko atari kugambirira kumwica ngo amusange iwe kandi urwo rugo rwarabagamo umukecuru nawe wahamya ko uyu yashakaga kwiyahura kubera amahano yamugwiriye, asaba kugabanyirizwa igihano agafungwa imyaka 10 kuko yamaze kwicuza imbere y'Imana n'imbere y'abantu kandi ko yiteguye kwigisha urukundo mu muryango nyarwanda. Yasabye Urukiko kuzirikana inyungu z'imfubyi basize kugira ngo ajye kubarera kuko babayeho nabi. Urukiko rwashatse kumenya ubwoko bw'icyuma yakoresheje niba ari icyuma cyo ku meza, Musangamfura asubiza ko ari icyuma gikoreshwa mu rugo ariko ko atari icyo ku meza kuko ntacyo bagira mu rugo rwabo.

[12] Ku birebana n'icyuma ashinjwa n'umwana we, Musangamfura yisobanuye avuga ko umwana we yitiranyije icyuma yatiye aho bita kwa Nyirangarama kugira ngo agikoreshe ahata inanasi, ngo nubwo yakizanye i kigali ngo yaje kugitirura, ibyo ngo akaba ari byo umwana yitiranya kuko bari kumwe atirura iki cyuma.

[13] Me Ruganza Bin Seba yasabye Urukiko guha agaciro ubusabe bwa Musangamfura Damien kuko icyaha cyamugwiririye kandi ko acyicuza bityo ko yahanishwa igifungo cy'imyaka 10 mu mwanya w'igifungo cya burundu yakatiwe.

[14] Ubushinjacyaha bwaburanye buvuga ko ubujurire bwa Musangamfura nta shingiro bufite kuko avuga ko yemera icyaha nyamara agahisha imikorere yacyo kuko icyaha kitamugwiririye ahubwo ko yagambiriye icyaha nk'uko abishinjwa n'umwana we wavuze ko yaguze icyuma kuri Mahoko aricyo yakoresheje yica uyu mubyeyi, ko adashobora gusobanura uburyo yakubiswe urushyi rukamutera kutamenya icyuma afashe n'aho agiteye. Yavuze ko, kuba yarashatse kwiyahura kubera icyaha yakoze bitavanaho ubugome yagikoranye

[15] Ubushinjacyaha bwavuze ko, n'iyo Musangamfura yaba yemera icyaha ku buryo bwuzuye, bitatuma agabanyirizwa igihano, ko ahubwo ubugome yagikoranye agatesha umubyeyi kurera abana, agomba kugumishwa ku gifungo cya burundu yahawe, ko rwagendera mu murongo Urukiko rw'Ikirenga rwafashe mu rubanza n˚ RPAA 0030/14/CS rwaciye ku wa 23/06/2017 haburana Ubushinjacyaha na Ntihabose Mathias, aho rwemeje ko uyu nubwo yemera icyaha

atagabanyirizwa igihano kubera ubugome yagikoranye. Yavuze ko uyumurongo ari nawo rwafashe mu rubanza RPA 0282/08/CS rwaciye ku wa 12/03/2010, haburana Ubushinjacyaha na Nyirangondo Virginie.

[16] Ubushinjacyaha bwavuze ko Musangamfura adakwiye kuburanisha ingingo yo gufungurwa ngo ajye kurera imfubyi ze kuko izo ari ingaruka zatewe n'icyaha yakoze, akaba atazishingireho asaba kugabanyirizwa igihano.

[17] Busoza buvuga ko Musangamfura Damien wishe umugore babyaranye abana 5, aramutse ahawe igihano gito gituma agaruka mu muryango nyarwanda mu gihe gito byaba ari ugutiza umurindi abakora ibyaha bishingiye ku muryango kandi ihame ari ukurinda umuryango.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 77 y'Itegeko Ngenga n° 01/2012 ryo kuwa 02/5/2012 rishyiraho igitabo cy'amategeko ahana, itegeko ryariho icyaha gikorwa ivuga ko ukwemera icyaha bibera impamvu nyoroshyacyaha iyo ushinjwa abikoze ku buryo budashidikanywaho kandi afite umutima wicuza kandi usaba imbabazi.

[19] Ingingo ya 140 y'Itegeko Ngenga n° 01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryakurikizwaga ubwo icyaha cyakorwaga iteganya ko: "kwica umuntu ubishaka byitwa ubwicanyi. Bihanishwa igifungo cya burundu."

[20] Ingingo y'ubujurire bwa Musangamfura ishingiye ku kuba yaremeye icyaha kuva agifatwa ariko agahanishwa igifungo cya burundu, no kuba yaramaze kumva uburemere bw'icyaha akaba asaba guhanishwa igifungo cy'imyaka 10 kugira ngo ajye kurera abana basigaye ari mfubyi kandi bagizweho ingaruka n'amarorerwa yakoze no kujya kuba intangarugero mu rukundo mu muryango nyarwanda kuko yarangije kubona ububi bw'icyaha.

[21] Urukiko rurasanga nubwo avuga ko yemeye icyaha nyamara atubya uburemere bw'icyaha aho ashaka kumvikanisha ko yasembuwe na Mushimiyimana Marie wamukubise urushyi ngo agwa mu byombo aho yavanye icyuma yamuteye agapfa, ibi akaba abishingiraho avuga ko yamwishe atabigambiriye.

[22] Urukiko rurasanga Musangamfura atavugisha ukuri ku mikorere y'icyaha kuko ibazwa (cote 14-22) ry'umwana wabo, Tumukunde Ruth wavutse mu 2000, ryerekana ko Musangamfura yari asanzwe afite umugambi wo kwica Mushimiyimana kandi ko uyu yagiye gutura iNtarama ahunze kuko Musangamfura yahoraga ashaka kumwica. Ibazwa rya Tumukunde kandi rigaragaza ko Musangamfura yavanye icyuma iMahoko (umukozi we asanzwe abagisha ingurube) akaba aricyo yicishije Mushimiyimana kuko Tumukunde yakiboneye n'amaso ye, Musangamfura nawe akaba yemera ko yavanye icyuma iMahoko ariko akabeshya ko yagisigiye umuntu ucuruza inanasi hafi y'aho bita kwa Nyirangarama.

[23] Nanone imvugo ya Tumukunde yerekana ko intonganya hagati y'ababyeyi be zatangiye ku mugoroba wo kuwa 01/01/2018 ubwo Musangamfura yasangaga Mushimiyimana aho acururiza inzoga akabuza amahoro abo ahasanze bose kugezaho umugore yafunze akazi agataha, iyi mvugo ikaba ifitanye isano n'iya Musangamfura wavuze ko yageze ku icumbi agasubira ku kabari ka

Mushimiyimana agiye gufata urufunguzo rwa moto ariko akabeshya ko Mushimiyimana yamuherekeje akamukubita urushyi. Izi mvugo zirerekana ko icyaha kitagwiririye Musangamfura ahubwo wari umugambi ushingiye ku makimbirane yari asanganywe na Mushimiyimana.

[24] Urukiko rurasanga Mukasakindi Suzane (cote 52 Pv y'Ubugenzacyaha) wari wararanye na Mushimiyimana nawe asobanura uburyo Musangamfura yabakinguje mu gitondo cyo kuwa 02/01/2018 hanyuma agahita yica Mushimiyimana wari uje kumukingurira ndetse uyu mukecuru ashatse gutabara na we amujugunya hanze asohoka ajya gutabaza yambaye ubusa (iyi mvugo ayihurizaho na Tumukunde Ruth nawe wavuze ko yahuye n'uyu mukecuru ishati ayifashe mu ntoki kandi afite amaraso ku kiganza), ibi bikaba bisobanura ko musangamfura atishe Mushimiyimana kubw'impanuka kuko iyo biba bityo atari kurwanya n'uwaje gutabara cyangwa ngo yikingirane kugeza aho ubuyobozi bwaje bumena urugi.

[25] Urukiko rurasanga nanone, Musangamfura abeshya ko yaguye mu masafuriya agafata icyuma yateye Mushimiyimana wahise apfa, nyamara Tumukunde mu ibazwa rye yavuze ko yamujombye icyuma ku mubiri hose, iyi mvugo ikaba ihuza n'iya Musangabatware (cote 26 PV y'Ubugenzacyaha) aho yabajijwe uburyo avuga ko atari agambiriye kwica Mushimiyimana nyamara yaramujombye icyuma ku mubiri hose no mu nda, maze asubiza muri aya magambo:"Nabonye aguye hasi nkeka ko aribupfe ndavuga nti reka nubundi apfe nanjye mbone kwiyica tujyane kuko numvise mbaye nk'umusazi". Aya magambo yerekana ko, uretse no kumutera icyuma ahubwo Musangamfura yishe Mushimiyimana ku buryo bw'agashinyaguro kugeza amujombye icyuma mu nda azi ko ari umugore utwite.

[26] Urukiko rurasanga, icyo Musangamfura yita ukwemera icyaha ari imiburanire igamije kugabanyirizwa igihano gusa kuko atubya ububi bw'icyaha yakoze avuga ko cyamugwiririye nyamara ari umugambi yateguye by'igihe kirekire n'kuko abatangabuhamya babajijwe mu Bugenzacyaha babihurizaho, by'umwihariko umwana wabo Tumukunde Ruth na Mukasikindi Suzane, umubyeyi wareze Mushimiyimana kuva akiri muto.

[27] Urukiko rurasanga, ubugome bwa MUSANGAMFURA mu mikorere y'icyaha bubonekera ku buryo yiciye Mushimiyimana imbere y'abana be bose no mu maso y'umukecuru (Mukasakindi), akaba yaraje kumwica amusanze ahoyamuhungiye (iNtarama) ndetse akamwica nabi amujombagura icyuma kugeza no ku nda kandi azi ko atwite.

[28] Urukiko rurasanga, uretse no kuba Musangamfura atavugisha ukuri, ubugome yakoranye icyaha bwihagije kugira ngo uyu atagabanyirizwa ibihano. Iki gitekerezo kirahuza n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza RPA 0246/09/CS rw'Ubushinjacyaha na Mukankusi Victoire rwaciwe kuwa 14/12/2012 aho Urukiko rw'Ikirenga rwemeje ko adakwiye kugabanyirizwa ibihano kubera ubugome bukabije Mukankusi yakoranye icyaha yica abana batatu abakubise ifuni mu mutwe ari we ubahamagaye iwe mu rugo nk'umubyeyi, ko bigaragaza ubugome bukabije butuma adakwiye kugabanyirizwa ibihano n'ubwo yemera icyaha akagisabira imbabazi.

[29] Urukiko rurasanga, Musangamfura Damien usaba kugabanyirizwa igihano kugira ngo ajye kurera imfubyi yasize, nta ndangagaciro za kibyeyi afite ku buryo yaba afite impuhwe z'abana bakuze babona buri munsi Musangamfura ahoza ku nkeke Mushimiyimana amubwira ko azamwica kugeza amwiciye mu maso y'abana be, ndetse imvugo ya Tumukunde ikaba yerekana ko Se yigeze amuteguza kuzarera imfubyi n'amara kwica nyina. Rurasanga kandi uyu adakwiriye

gushingira ku ngaruka zikomoka ku cyaha yakoze ngo asabe kugabanyirizwa igihano. Iki nicyo gitekerezo kiboneka mu rubanza RPA 0081/13/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 16/12/2016, aho Urukiko rwanzuye ko ubusabe bwa Uwimpuhwe Aline bwo kugabanyirizwa igihano ngo asange abana nta shingiro bufite kuko kutabana n'abana be ari ingaruka z'icyaha yakoze.

[30] Urukiko rurasanga mu guca uru rubanza hagomba gukurikizwa ihame "proportionnalite des délits et des peines", ryagarutsweho n'umuhanga mu mategeko "Cesare Beccaria" mu gitabo cye cyitwa "*Des delits et des peines" aho yabivuze muri aya magambo: "Plus les délits sont nuisibles au bien public, plus forts doivent être aussi les obstacles qui les en écartent. {…} Les moyens que la législation emploie pour empêcher les crimes doivent donc être plus forts, à mesure que le délit est plus contraire au bien public, et peut devenir commun*"[1]. Ugenekereje mu Kinyarwanda yashakaga kuvuga ko: "uko ibyaha birenza ibindi ubukana mu kubangamira rubanda ariko n'ingamba zo kubihashya zigomba kuba zikomeye cyane".

[31] Urukiko rurasanga, nk'uko uru Rukiko rwabyemeje mu rubanza RPAA 00145/2018/CA rwaciye ku wa 14/12/2018, icyaha cyo kwica umuntu kibangamira uburenganzira bw'ibanze bwa muntu, uburenganzira burengerwa n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, mu ngingo yaryo ya 12[2], ndetse n'ingingo ya 3 y'Amasezerano Mpuzamahanga arebana n'uburenganzira bwa muntu yo kuwa 10 Ukuboza 1948[3].

[32] Hashingiwe ku ngingo z'amategeko n'ibisobanuro byagaragajwe haruguru, Urukiko rurasanga imbabazi Musangamfura Damien asaba atazihabwa kuko icyaha yakoze yagikoranye ubugome bukabije kandi kikaba cyarateje ingaruka zikomeye ku muryango wa Mushimiyimana Marie, by'umwihariko ku bana be yavukije amahirwe yo kurerwa n'umubyeyi wabo wabasize bakiri bato. Rurasanga nta kosa Urukiko Rukuru rwakoze mu kumuhanisha igifungo cya burundu, bityo iki gihano kikaba kigomba kugumaho.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ubujurire bwa Musangamfura Damien nta shingiro bufite.

[34] Rwemeje ko nta gihindutse ku mikirize y'urubanza RPA 00523/2019/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 20/12/2019.

[35] Rutegetse ko igihano cy'igifungo cya burundu, Musangamfura Damien yahanishijwe ku cyaha cyo kwica umugore we witwa Mushimiyimana Marie kidahindutse.

Rutegetse ko Musangamfura Damien asonerwa amagarama y'urubanza kuko yaburanye afunzwe.

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[1] Cesare Beccaria, Des peines et des delits, editions du Boucher, paris, 2002 p.76 du livre numerique, consulte online sur www.le boucher.com/pdf/Beccaria/Beccaria.pdf.

[2] Umuntu wese afite uburenganzira bwo kubaho. Ntawe ushobora kuvutswa ubuzima mu buryo bunyuranije n'amategeko

[3] Everyone has the right to life, liberty and security of person