UBUSHINJACYAHA v NZAFASHWANIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00032/2019/CA (Karimunda, P.J., Gakwaya na Muhumuza J.) 28 Gashyantare 2020]

Amategeko nshinjabyaha – Ubutabera buboneye – Igihano – Akamaro k'igihano ntikareberwa gusa k'uburemere bw'icyaha cyakozwe, ahubwo hakwiye no kwitabwa ku nyungu za rubanda harimo n'uwahohotewe mu gukumira ko icyo cyaha cyazasubira cyaba gisubiwemo n'uregwa cyangwa gikozwe n'undi ndetse hakitabwa no ku nyungu z'uregwa hagendewe ku mwihariko wa buri rubanza. – Urukiko rushobora kugabanyiriza uregwa igihano iyo rusanga kwemeza igihano giteganywa n'Itegeko cyangwa cyatanzwe n'Urukiko rubanza byaba bitari mu nyungu z'ubutabera.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, uregwa akurikiranyweho n'Ubushinjacyaha kuba yarahuye n'umwana w'umukobwa witwa N. M. C. (amazina yanditse ahinnye mu nyungu z'umwana) wavutse ku wa 22/12/2000, akamusambanya, yarangiza akiruka, ariko akaza gufatwa n'abashinzwe umutekano bukeye. Uregwa yaburanye ahakana icyaha avuga ko azira inzika afitanye na nyina w'umwana wahohotewe kuko baburanye igishanga akamutsinda. Urukiko Rwisumbuye rwa Musanze rwasanze umwana N. M. C. yaravutse ku wa 22/12/2000, bivuze ko ku wa 27/08/2017, icyaha gikorwa, yari afite imyaka cumi n'itandatu (16) y'amavuko, maze rushingira ku mvugo zinyuranye zirimo iz'uregwa zemera icyaha mu Bugenzacyaha, rwemeza ko uregwa ahamwa n'icyaha cyo gusambanya umwana utarageza ku myaka y'ubukure, rumuhanisha igifungo cya burundu.

Uregwa yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko yahamijwe icyaha atakoze kuko nta raporo ya muganga igaragaza ko N. M. C yasambanyijwe, ko nta mutangabuhamya wigeze ugaragazwa, uvuga ko yababonye cyangwa yumvise uwo mukobwa atabaza, ko kuba yaremeye icyaha mu Bugenzacyaha n'imbere y'Urukiko aburana ku ifunga n'ifungurwa by'agateganyo ari uko aba Polisi bamusabye kwemera icyaha kugirango arekurwe, nyuma atekereje neza asanga baramwoheje. Urwo Rukiko rwasanze uregwa yari yemereye icyaha mu Bugenzacyaha, mu Bushinjacyaha n'imbere y'Urukiko rw'Ibanze rwa Cyeru, ibyo yemeye bikaba bihura n'imvugo z'umwana wahohotewe, bityo ko kuba nta raporo ya muganga iri muri dosiye, cyangwa kuba hari amakimbirane yaba afitanye na nyina w'umwana bitavanaho ko yakoze icyaha, rwemeza ko icyaha akurikiranweho kimuhama, rutegeka ko ahanishwa igifungo cy'imyaka makumyabiri n'itanu (25).

Uregwa yajuririye mu Rukiko rw'Ubujurire avuga ko yahamijwe icyaha yahimbiwe, Urukiko Rukuru, Urugereko rwa Musanze rukimuhamya nta raporo ya muganga iri muri dosiye igaragaza ko umwana yasambanyijwe koko, nta batangabuhamya b'ingirakamaro babyemeje, nta na raporo y'inzego z'ibanze z'iwabo zigaragaza ko icyaha cyakozwe, ndetse ko n'Urukiko rutikoreye iperereza rwarigushingiraho rwemeza ko icyaha kimuhama, bituma ahabwa igihano gikakaye kandi akiri muto, asaba kurenganurwa.

Ubushinjacyaha bwo buvuga ko uregwa yatangiye yemera icyaha, ageze igihe cyo kuburana imizi y'urubanza aragihakana, akaba yongeye kwemera abonye ko ageze ku munota wa nyuma, ubwabyo bigaragaza ko nta kwicuza afite. Bwongeraho ko atakwitwaza kuba N. M. C. yaramwemereye ko basambana kuko ukwemera k'umwana utarageza imyaka cumi n'umunani

(18) y'amavuko, nta shingiro kwahabwa mu mategeko ndetse n'ibyo avuga ko uwo mwana yamubabariye, ko yaje no kumusura kuri gereza bikaba bitahabwa agaciro kuko nta kimenyetso abitangira, Ubushinjacyaha busaba ko hahamishwaho imikirize y'urubanza rwajuririwe.

Incamake y'icyemezo: 1. Akamaro k'igihano ntikareberwa gusa k'uburemere bw'icyaha cyakozwe, ahubwo hakwiye no kwitabwa ku nyungu za rubanda harimo n'uwahohotewe mu gukumira ko icyo cyaha cyazasubira cyaba gisubiwemo n'uregwa cyangwa gikozwe n'undi ndetse hakitabwa no ku nyungu z'uregwa hagendewe ku mwihariko wa buri rubanza, kandi Urukiko rwagabanyiriza uregwa igihano iyo rusanga kwemeza igihano giteganywa n'Itegeko cyangwa cyatanzwe n'Urukiko rubanza byaba bitari mu nyungu z'ubutabera, bityo igihano cy'igifungo cy'imyaka 25 uregwa yari yarahanishijwe gisimbujwe igihano cy'igifungo cy'imyaka icumi (10) .

Ubujurire bufite ishingiro;
Uregwa ahanishijwe igihano cy'igifungo cy'imyaka 10;
amagarama y'urubanza aherera ku Isanduku ya Leta.

Amategeko yashingiweho:

Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano, Ingingo ya 58 n'iya 133, igika cya mbere, agace ka mbere, n'igika cya kabiri.

Itegeko-Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 78, igika cya mbere, agace ka 2.

Imanza zifashishijwe:

Re Kabasinga, RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 4/12/2019

MUKAGATOYA Marie v BAHIRWE Geoffrey, RS/REV/INJUST/PEN 0001/17/CS-RP 00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/04/2017, igika cya 41

Ubhushinjacyaha v Lt. Mutabazi, RPA 00012/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/11/2019, igika cya 22.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, NZAFASHWANIMANA Jean de Dieu akurikiranyweho n'Ubushinjacyaha kuba ku wa 27/08/2017 yarahuye n'umwana w'umukobwa witwa N. M. C. wavutse ku wa 22/12/2000, mu ishyamba riri mu Mudugudu wa Gacyamo, Akagari ka Rugari, Umurenge wa Rwerere, Akarere ka Burera, akamusambanya, yarangiza akiruka, ariko akaza gufatwa n'abashinzwe umutekano bukeye. NZAFASHWANIMANA Jean de Dieu yaburanye ahakana icyaha avuga ko azira inzika afitanye na nyina w'umwana wahohotewe kuko baburanye igishanga akamutsinda.

[2] Mu rubanza n° RP 00318/2017/TGI/MUS rwaciwe ku wa 11/12/2017, Urukiko Rwisumbuye rwa Musanze rwasanze N. M. C. yaravutse ku wa 22/12/2000, bivuze ko ku wa

27/08/2017, icyaha gikorwa, yari afite imyaka cumi n'itandatu (16) y'amavuko, uyu mukobwa akaba yarasobanuye uburyo yahuye na NZAFASHWANIMANA Jean de Dieu akamupfuka umunwa, akamukubita hasi, agahita amusambanya, iyi mvugo ikaba yemezwa na NZABONIMANA Callixte wahuye n'uwo mwana akimara guhohoterwa ndetse n'iya NYIRANSABIMANA Appolonie, nyina w'umwana, byose bikaba bishimangira ibyo NZAFASHWANIMANA Jean de Dieu yavugiye mu Bugenzacyaha ku wa 28/08/2017 by'uko yahuriye na N. M. C. mu nzira akamusaba ko basambana, undi akabyemera, barangiza buri wese agataha ukwe, rwemeza ko icyaha cyo gusambanya umwana utarageza ku myaka y'ubukure, kimuhama, rushingiye ku ngingo ya 191 y'Itegeko-Ngenga no 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, rumuhanisha igifungo cya burundu.

[3] NZAFASHWANIMANA Jean de Dieu yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko yahamijwe icyaha atakoze kuko nta raporo ya muganga igaragaza ko N. M. C. yasambanyijwe, ko nta mutangabuhamya wigeze ugaragazwa, uvuga ko yababonye cyangwa yumvise uwo mukobwa atabaza, ko kuba yaremeye icyaha mu Bugenzacyaha n'imbere y'Urukiko aburana ku ifunga n'ifungurwa by'agateganyo ari uko aba Polisi bamusabye kwemera icyaha kugirango arekurwe, nyuma atekereje neza asanga baramwoheje, akaba asanga hatari gushingirwa gusa ku mvugo za NYIRANSABIMANA Appolonie, nyina w'umwana, nyamara yaragaragaje ko amufitiye inzika ikomoka ku kuba baraburanye gishanga akamutsinda.

[4] Mu rubanza RPA 00013/2018/HC/MUS rwaciwe ku wa 26/10/2018, Urukiko Rukuru, Urugereko rwa Musanze, rwasanze NZAFASHWANIMANA Jean de Dieu yari yemereye icyaha mu Bugenzacyaha, mu Bushinjacyaha n'imbere y'Urukiko rw'Ibanze rwa Cyeru, ibyo yemeye bikaba bihura n'imvugo z'umwana wahohotewe, bityo ko kuba nta raporo ya muganga iri muri dosiye, cyangwa kuba hari amakimbirane yaba afitanye na nyina w'umwana bitavanaho ko yakoze icyaha, rwemeza ko icyaha akurikiranweho kimuhama, rusanga icyakora umwana wahohotewe yari afite imyaka cumi n'itandatu (16) y'amavuko icyaha gikorwa, rushingiye ku ngingo ya 133, igika cya mbere n'icya kabiri, y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ihanisha icyo cyaha igifungo kiri hagati y'imyaka makumyabiri (20) na makumyabiri n'itanu (25), rushingiye kandi ku kuba NZAFASHWANIMANA Jean de Dieu yaraburanye ahakana icyaha, rutegeka ko ahanishwa igifungo cy'imyaka makumyabiri n'itanu (25).

[5] NZAFASHWANIMANA Jean de Dieu yajuririye mu Rukiko rw'Ubujurire avuga ko yahamijwe icyaha yahimbiwe, Urukiko Rukuru, Urugereko rwa Musanze rukimuhamya nta raporo ya muganga iri muri dosiye igaragaza ko umwana yasambanyijwe koko, nta batangabuhamya b'ingirakamaro babyemeje, nta na raporo y'inzego z'ibanze z'iwabo zigaragaza ko icyaha cyakozwe, ndetse ko n'Urukiko rutikoreye iperereza rwarigushingiraho rwemeza ko icyaha kimuhama, bituma ahabwa igihano gikakaye kandi akiri muto, asaba kurenganurwa. Ku wa 30/12/2019, NZAFASHWANIMANA Jean de Dieu yatanze imyanzuro y'inyongera yemera icyaha mu buryo budashidikanywaho, avuga ko agisabira imbabazi, asaba uru Rukiko kumugabanyiriza igihano.

[6] Urubanza rwaburanishijwe mu ruhame ku wa 12/02/2020, NZAFASHWANIMANA Jean de Dieu yunganiwe na Me ICYITEGETSE Godelive naho Ubushinjacyaha buhagarariwe na NDIBWAMI Rugamba, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba ukwemera icyaha kwa NZAFASHWANIMANA Jean de Dieu kwamubera impamvu yatuma agabanyirizwa igihano.

[7] NZAFASHWANIMANA Jean de Dieu avuga ko yahuye na N. M.C baraganira, amusaba ko basambana arabyemera, ko icyo gihe yari afite imyaka makumyabiri n'itanu (25), ariko atazi neza imyaka uwo mukobwa afite. Asobanura ko bamaze kubyumvikanaho, bagiye ahiherereye, ariko uwitwa NZABONIMANA Callixte arababona abibwira nyina w'umukobwa. Asobanura ko mu Bugenzacyaha, mu Bushinjacyaha n'imbere y'Urukiko rw'Ibanze rwa Cyeru aburana ifunga n'ifungura by'agateganyo, yemeye icyaha ariko ageze muri gereza, baramushuka bituma mu mizi y'urubanza aburana ahakana icyaha. Avuga ko afite umugore n'abana babiri, umukuru akaba afite imyaka ine (4), akaba yicuza icyatumye ahakana icyaha mbere, ko noneho agisabira imbabazi kandi ko yanazisabye N. M. C. waje kumusura inshuro enye kuri gereza, akaba asaba uru Rukiko guca inkoni izamba, rukamugabanyiriza igihano kugirango azabashe kwigisha abandi ububi bw'icyaha yakoze.

[8] Me ICYITEGETSE Godelive, umwunganira, avuga ko NZAFASHWANIMANA Jean de Dieu yageze muri gereza baramushuka bituma atemera icyaha mu nkiko zabanje, ariko ko yari yacyemeye, asobanura n'imikorere yacyo mu nzego z'iperereza n'imbere y'Urukiko rw'Ibanze rwa Cyeru. Asobanura ko nyuma yo kugisha inama umutima yasanze akwiye kongera kuvugisha ukuri, akaba asanga hakwiye gushingirwa ku rubanza NYIRANGONDO Virginie yaburanaga n'Ubushinjacyaha aho Urukiko rw'Ikirenga rwavuze ko nta gihe ntarengwa cyagenwe n'Itegeko cyo kuba umuntu yakwemera icyaha, uru Rukiko rugaha ishingiro ubujurire bwe, agahanishwa kimwe cya kabiri cy'igihano yahanishijwe, hashingiwe ku bitegenywa n'ingingo ya 72 y'Itegeko-Ngenga n_o 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga icyaha gikorwa.

[9] Uhagarariye Ubushinjacyaha avuga ko NZAFASHWANIMANA Jean de Dieu yatangiye yemera icyaha, ageze igihe cyo kuburana imizi y'urubanza aragihakana, akaba yongeye kwemera abonye ko ageze ku munota wa nyuma, ubwabyo bigaragaza ko nta kwicuza afite. Avuga ko atakwitwaza kuba N. M. C. yaramwemereye ko basambana kuko ukwemera k'umwana utarageza imyaka cumi n'umunani (18) y'amavuko, nta shingiro kwahabwa mu mategeko ndetse n'ibyo avuga ko uwo mwana yamubabariye, ko yaje no kumusura kuri gereza bikaba bitahabwa agaciro kuko nta kimenyetso abitangira, ariyo mpamvu asaba ko hahamishwaho imikirize y'urubanza rwajuririwe.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 133, igika cya mbere, agace ka mbere, n'igika cya kabiri y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ivuga ko « Umuntu wese ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha : 1o gushyira igistina mu gitsina, mu kibuno cyangwa mu kanwa k'umwana… Iyo abihamijwe n'Urukiko, ahanishwa igifungo kitari munsi y'imyaka makumyabiri (20) ariko kitarenze imyaka makumyabiri n'itanu (25)».

[11] Ingingo ya 58 y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko « Umucamanza ubwe niwe ugena niba impamvu nyoroshyacyaha zemezwa n'umucamanza zahabwa agaciro. Kwemeza impamvu nyoroshyacyaha bigomba gusobanurwa mu cyemezo cy'Urukiko. » Naho ingingo ya 60, igika cya mbere, agace ka kabiri y'iryo Tegeko iteganya ko « Iyo hari impamvu zigabanya ububi bw'icyaha, ibihano bishobora kugabanywa ku buryo bukurikira: …2o igihano cy'igifungo kimara igihe kizwi cyangwa ihazabu bishobora kugabanywa ariko ntibijye munsi y'igihano gito ntarengwa giteganyirijwe icyaha cyakozwe. »

[12] Dosiye y'urubanza igaragaza ko NZAFASHWANIMANA Jean de Dieu yavugiye mu Bugenzacyaha ku wa 28/08/2017 ko yahuye na N. M. C. amusaba ko yamusambanya arabyemera, mu iburanisha ku ifunga n'ifungura ry'agateganyo imbere y'Urukiko rw'Ibanze rwa Cyeru ryabaye ku wa 12/09/2017, nabwo akaba yaremeye ko yasambanyije uwo mwana abitewe n'inzoga.

[13] Dosiye y'urubanza igaragaza ko Urukiko Rukuru, Urugereko rwa Musanze rwahanishije NZAFASHWANIMANA Jean de Dieu igifungo cy'imyaka makumyabiri n'itanu (25) rushingiye ku kuba itegeko ryarahindutse, icyaha cyahanishwaga igifungo cya burundu y'umwihariko n'ingingo ya 190 n'iya 191 z'Itegeko-Ngenga n°01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, kikaba gihanishwa igifungo kiri hagati y'imyaka makumyabiri (20) na makumyabiri n'itanu (25) n'ingingo ya 133, igika cya mbere, agace ka mbere, n'igika cya kabiri y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, bivuze ko yagabanyirijwe igihano ku bw'Itegeko ariko Urukiko ntirwagira ukundi rumugabanyiriza igihano bitewe n'uko, nk'uko rwabisobanuye na nyir'ubwite abyivugira, yaburanye ahakana icyaha.

[14] Urukiko rurasanga NZAFASHWANIMANA Jean de Dieu yarasobanuye imikorere y'icyaha mu buryo budashidikanywaho, agaragaza uburyo yahuye n'umwana wahohotewe n'uburyo ibiganiro byabo byagejeje aho amwumvisha ko akwiye kumusambanya, akaba avuga ko abyicuza kandi abisabira imbabazi, imvugo ye ikaba ishimangira ibyo yari yaravugiye mu nzego z'iperereza n'imbere y'Urukiko rw'Ibanze rwa Cyeru aburana ku ifunga n'ifungura by'agateganyo ndetse n'ibyavuzwe na N. M. C., umwana wahohotewe, NYIRANSABIMANA Appolonie, nyina w'umwana na HAKIZIMANA Callixte, bityo ibyo Ubushinjacyaha buvuga ko ukwemera icyaha kwa NZAFASHWANIMANA Jean de Dieu kudakwiye guhabwa agaciro kuko yemeye ku rwego rwa nyuma, bikaba nta shingiro bikwiye guhabwa kuko, uretse kuba uku kwemera hamwe n'ibindi bimenyetso biri muri dosiye bigaragaza ko ari we wakoze icyaha mu buryo budashidikanywaho, kuba avuga ko acyicuza byerekana ko atangiye gusobanukirwa n'uburemere bw'icyaha yakoze, akaba ari intambwe ateye mu nzira yo kugororoka.

[15] Urukiko rurasanga nk'uko Urukiko rw'Ikirenga rwabigarutseho mu rubanza MUKAGATOYA Marie yaburanaga na BAHIRWE Geoffrey[1] ndetse uru Rukiko rukabyemeza mu rubanza Lt. MUTABAZI Joël na bagenzi be baburanaga n'Ubushinjacyaha bwa Gisirikare[2], akamaro k'igihano ntikareberwa gusa k'uburemere bw'icyaha cyakozwe, ahubwo hakwiye no kwitabwa ku nyungu za rubanda harimo n'uwahohotewe mu gukumira ko icyo cyaha cyazasubira cyaba gisubiwemo n'uregwa cyangwa gikozwe n'undi ndetse hakitabwa no ku nyungu z'uregwa

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[1] Reba igika cya 41 cy'urubanza no RS/REV/INJUST/PEN 0001/17/CS-RP 00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/04/2017.

[2] Reba igika cya 22 cy'urubanza no RPA 00012/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/11/2019.

hagendewe ku mwihariko wa buri rubanza, bityo Urukiko rukaba rwagabanyiriza uregwa igihano iyo rusanga kwemeza igihano giteganywa n'Itegeko cyangwa cyatanzwe n'Urukiko rubanza byaba bitari mu nyungu z'ubutabera[3].

[16] Ku birebana n'ububasha bw'Urukiko bwo guhuza igihano n'uburemere bw'icyaha, inyungu za rubanda n'iz'uregwa, Urukiko rurasanga mu rubanza no RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 4/12/2019 ku bijyanye no kumenya niba kubuza Urukiko kugabanya igihano binyuranyije n'Itegeko Nshinga, Urukiko rw'Ikirenga rwasanze isuzumwa ry'impamvu nyoroshyacyaha n'ibihano bigomba kubahiriza amahame agize ubutabera buboneye nk'uko ateganywa n'ingingo ya 49, igika cya mbere y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ayo mahame akaba avuga ko mu gutanga igihano hakwiye gukurikizwa uburemere bw'icyaha (1), ingaruka icyaha cyateye (2), impamvu zatumye uregwa agikora (3), uko uwagikoze yari asanzwe yitwara (4) imibereho ye bwite (5) n'uburyo icyaha cyakozwemo (6), bityo ko kubuza Urukiko kugabanya igihano iyo hari impamvu nyoroshyacyaha binyuranyije n'ayo mahame bitewe n'uko kwemeza gusa igihano giteganywa n'Itegeko byaba bigihinduye kuba ntayegayezwa, nyamara igihano ntayegayezwa kinyuranye n'ihame ryo guca urubanza rutabera kuko kibuza uregwa uburenganzira bwo kukijuririra.

[17] Urukiko rurasanga Urukiko rw'Ikirenga rwarakomeje ruvuga ko umucamanza agomba kwita ku mpamvu nkomezacyaha no ku mpamvu nyoroshyacyaha zaba ari izirebana n'uregwa cyangwa izirebana n'icyaha, Itegeko ryanga ko izo mpamvu zisuzumwa ngo Urukiko rwemeze ishingiro ryo kugabanya igihano rikaba rikwiye gufatwa nk'irinyuranye n'ingingo ya 29 y'Itegeko Nshinga ivuga ko buri muntu afite uburenganzira ku butabera buboneye ndetse rikaba ribangamiye ubwigenge bw'umucamanza kuko nta mahitamo rimuha, rikamwambura inshingano yo gutanga igihano kigendanye n'icyaha cyakozwe, ashingiye ku mikorere yacyo, uko cyakozwe, imyitwarire y'uwagikoze n'ingaruka zacyo k'uwagikorewe no ku muryango nyarwanda muri rusange, rwanzura ko nta wavuga ko umucamanza yigenga mu gutanga igihano mu gihe agomba gutanga igihano ntayegayezwa kitajyanye n'uburemere bw'icyaha, uburyo cyakozwemo, n'igihe hari impamvu nyoroshyacyaha zikomeye zari gutuma uregwa agabanyirizwa igihano.

[18] Ku bijyanye n'aho Itegeko ryateganyije ibihano bito (minimum) n'ibiri hejuru (maximum), Urukiko rurasanga Urukiko rw'Ikirenga rwarasanze kutagabanya ibihano bito biteganyijwe n'Itegeko byagira ishingiro gusa iyo intera iri hagati y'igihano gito n'ikiri hejuri ari ndende, naho mu gihe iyo intera ari nto, ubwabyo bibuza umucamanza guhuza igihano n'icyaha cyakozwe, inyungu z'uwahohotewe, iza rubanda n'iz'uregwa, ariyo mpamvu ku bijyanye n'uru rubanza, ingingo ya 60, igika cya mbere, agace ka kabiri y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ibuza Urukiko kujya munsi y'igifungo cy'imyaka makumyabiri (20) mu gihe hari impamvu nyoroshyacyaha idakwiye gukoreshwa kuko inyuranye n'amahame y'ubutabera buboneye n'ubwingenge bw'umucamanza nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza rwavuzwe haruguru.

[3] "…the correct approach in exercising the discretion conferred upon the Court is the following: (1) the starting point is that a prescribed sentence must be imposed; (2) Only if the Court is satisfied that substantial and compelling circumstances exist, which justify the imposition of a lesser sentence may it do so; (3) Deciding whether substantial and compelling circumstances exist, each case must be decided on its own facts and the Court is required to look at all factors and consider them cumulatively; (4) If the Court concludes in a particular case that a minimum prescribed sentence is so disproportionate to the sentence which would have been appropriate, it is entitled to impose a lesser sentence." State v. Homareda 1999 (2) SACR 319 (W).

[19] Urukiko, rushingiye ku bimaze gusobanurwa haruguru kandi rwisunze ingingo ya 78, igika cya mbere, agace ka 2 y'Itegeko-Ngenga no 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana yakoreshwaga icyaha gikorwa iteganya ko *« Iyo hari impamvu zoroshya uburemere bw'icyaha, ibihano bigabanywa ku buryo bukurikira: … 2o igihano cy'igifungo kuva ku myaka icumi kugeza ku myaka makumyabiri n'itanu (25) gishobora kugabanywa kugeza ku gifungo cy'imyaka itanu (5) »,* rurasanga kuba NZAFASHWANIMANA Jean de Dieu yarashutse umwana w'imyaka cumi n'itandatu (16) y'amavuko kugeza ubwo umwumvishije ko akwiye kumusambanya, ubwabyo byari bikwiye gutuma ahanishwa igihano kiremereye giteganywa n'Itegeko, ariko kuva yaremeye icyaha agifatwa n'ubu akaba yongeye kugarura umutima akacyemera biragaragaza ko atangiye kumva uburemere bwacyo, bityo hamwe n'uko ntaho Ubushinjacyaha bugaragaza ko asanzwe ari umunyarugomo cyangwa ko hari ibindi byaha yigeze akurikiranwaho mbere, bikaba byamubera impamvu nyoroshyacyaha zatuma agabanyirizwa igihano, igifungo cy'imyaka makumyabiri n'itanu (25) yakatiwe kigasimbuzwa igifungo cy'imyaka icumi (10).

III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko ubujurire bwa NZAFASHWANIMANA Jean de Dieu bufite ishingiro ;

[21] Rwemeje ko imikirize y'urubanza no RPA 00013/2018/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 26/10/2018 ihindutse ku birebana n'igihano NZAFASHWANIMANA Jean de Dieu yahanishijwe;

[22] Ruhanishije NZAFASHWANIMANA Jean de Dieu igifungo cy'imyaka icumi (10);

[23] Ruvuze ko amagarama y'urubanza aherera ku Isanduku ya Leta.