UBUSHINJACYAHA v. MBARUSHIYEZE

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00360/2020/CA (Rugabirwa, P.J.,) 28 Mata 2022]

Amategeko agenga imanza z'inshinjabyaha – Igihano – Kuba uregwa atemera icyaha ku buryo budashidikanywaho bituma igihano kitagabanywa.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe, Ubushinjacyaha burega Mbarushiyeze kuba yarakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi ubwo yajyaga kwa Mbihorere afite umupanga n'ibindi byuma ashaka kumwica, yinjira mu nzu, noneho Mbihorere wari urimo yoga abonye umuntu amwinjiranye ajya kureba ibyo aribyo, maze uregwa abangura umupanga ashaka kumutema umutwe, Mbihorere aramukwepa, uregwa ahushije amutema ku kananwa, Mbihorere arataka cyane abantu barahurura, uregwa yumvise abantu bahuruye ata umupanga yari afite n'indangamuntu ye ariruka, bituma atagera ku mugambi we wo kumwica. uregwa yaburanye yemera icyaha aregwa. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cy'ubwinjiracyaha mu bwicanyi, rumuhanisha igifungo cy'imyaka cumi n'itanu (15) kubera ko ubwinjiracyaha yakoze bwagarukiye ku gutema Mbihorere ku kananwa kandi ko abamutabaye bamujyanye kwa muganga bamuvura icyo gikomere kirakira.

Uregwa yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, maze urwo Rukiko rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

Uregwa yarongeye ajuririra URukiko rw'Ubujurire asaba kugabanyirizwa ibihano kubera ko akomeje kwemera icyaha akanagisabira imbabazi. Ko Urukiko Rukuru, Urugereko rwa Nyanza, rutamugabanyirije kubera ko atemeraga icyaha, ariko ko uru Rukiko rukwiye kumugabanyiriza igihano hashingiwe ku ingingo ya 71, 77 na 78 z'Itegeko Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, agahanishwa igifungo cy'imyaka 10, kubera ko yemera icyaha ku buryo budashidikanywaho akanagisabira imbabazi.

Ubushinjacyaha bwo bwaburanye buvuga ko uregwa atakongera kugabanyirizwa igihano kubera ko atemera icyaha ku buryo budashidikanywaho kuko avuga ko atigeze agambirira gukora icyaha, ko yari ajyanywe no kurwana na Mbihorere, kandi mu by'ukuri yari ajyanywe no kumwica kuko yashakaga kumukuraho umutwe, kandi ibikorwa yakoze bigize ubwinjaracyaha mu cyaha cy'ubwicanyi nk'uko bigaragazwa n'imvugo z'abatangabuhamya bari muri dosiye ye, ndetse n'imvugo uregwa yavugiye mu Bugenzacyaha igaragaraza ko yari afite ubushake bwo gukora icyaha cy'ubwicanyi.

Incamake y'icyemezo: 1. Kuba uregwa atemera icyaha ku buryo budashidikanywaho bituma igihano kitagabanywa, bityo ubujurire bwa Mbarushiyeze nta shingiro bufite.

Ubujurire nta shingiro bufite.

Amategeko yakoreshejwe:

Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya ingingo ya 21, igika cya 3, 60, 1º, n'iya 334, igika cya 2.

Itegeko - Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 30, igika cya mbere.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe, Ubushinjacyaha burega Mbarushiyeze Théoneste kuba yarakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi kubera ko ku wa 15/01/2017, mu gihe cya saa mbiri kugera saa tatu z'umugoroba, yagiye kwa MBIHORERE François afite umupanga n'ibindi byuma ashaka kumwica, yinjira mu nzu, noneho MBIHORERE François wari urimo yoga abonye umuntu amwinjiranye ajya kureba ibyo aribyo, maze MBARUSHIYEZE Théoneste abangura umupanga ashaka kumutema umutwe, MBIHORERE François aramukwepa, MBARUSHIYEZE Théoneste ahushije amutema ku kananwa, MBIHORERE François arataka cyane abantu barahurura, MBARUSHIYEZE Théoneste yumvise abantu bahuruye ata umupanga yari afite n'indangamuntu ye ariruka, bituma atagera ku mugambi we wo kumwica. MBARUSHIYEZE Théoneste yaburanye yemera icyaha aregwa.

[2] Urwo Rukiko rwaciye urubanza RP 00016/2018/TGI/NYBE ku wa 09/02/2018, rwemeza ko MBARUSHIYEZE Théoneste ahamwa n'icyaha cy'ubwinjiracyaha mu bwicanyi, rumuhanisha igifungo cy'imyaka cumi n'itanu (15) kubera ko ubwinjiracyaha yakoze bwagarukiye ku gutema MBIHORERE François ku kananwa kandi ko abamutabaye bamujyanye kwa muganga amuvura icyo gikomere kirakira.

[3] MBARUSHIYEZE Théoneste yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, ruca urubanza nº RPA 00160/2018/HC/NYA ku wa 28/06/2019, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse, bityo MBARUSHIYEZE Théoneste akomeje guhanishwa igifungo cy`imyaka cumi n'itanu (15) yahawe mbere kubera ko atemera icyaha ku buryo budashidikanywaho, kandi ko umucamanza adategetswe kugabanya igihano kabone n'ubwo uregwa yaba yemera icyaha.

[4] MBARUSHIYEZE Théoneste yajuririye urwo rubanza mu Rukiko rw'Ubujurire asaba kugabanyirizwa ibihano kubera ko akomeje kwemera icyaha akanagisabira imbabazi.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 05/04/2022, MBARUSHIYEZE Théoneste yunganiwe na Me NDAYISABYE Alex, naho Ubushinjacyaha buhagarariwe na UWANZIGA Lydia, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO:

Kumenya niba Mbarushiyeze Théoneste yakongera kugabanyirizwa igihano

[6] MBARUSHIYEZE Théoneste avuga ko Urukiko Rukuru rwamuhanishije ibihano birebire kandi yaraburanye yemera icyaha akanagisabira imbabazi. Asobanura ko yakoze icyaha atakigambiriye, ko ahubwo yagikoreshejwe na nyirabuja NYIRABAZIKI Jeannette yaragiriraga inka kubera ko yatashe mu rugo asanga yarwanye na MBIHORERE François noneho nyirabuja amwitabaza anamwemerera ibihumbi ijana (100.000 Frw), maze afata inkoni n'umuhoo ajya mu rugo rwa MBIHORERE François, ariko ko yamubonye, bararwana, aramukomeretsa, ahita atabaza abantu baje bagasanga yakomeretse, bituma umugambi yari afite wo kumwica upfa. Asaba uru Rukiko ko rwamugabanyiriza igihano kubera ko yemera icyaha akanagisabira imbabazi kuko atari yakigambiriye.

[7] Me NDAYISABYE Alex, umwunganira, avuga Urukiko Rukuru, Urugereko rwa Nyanza, rutagabanyirije MBARUSHIYEZE Théoneste kubera ko atemeraga icyaha, ariko ko uru Rukiko rukwiye kumugabanyiriza igihano hashingiwe ku ingingo ya 71, 77 na 78 z'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, agahanishwa igifungo cy'imyaka 10, kubera ko yemera icyaha ku buryo budashidikanywaho akanagisabira imbabazi kuko yasobanuye ko nta rundi rwago yari afitiye MBIHORERE François yakoreye icyaha, ko ahubwo yagaragaje ko yagishowemo na nyirabuja.

[8] Avuga kandi ko kuba MBARUSHIYEZE Théoneste yarasubije agatima impembero akavugisha ukuri ku birebana n'imikorere y'icyaha yakoze bikwiye gutuma uru Rukiko rumugabanyiriza ibihano kuko nta gihe ntarengwa cyateganyijwe cy'uko uregwa yakwemera icyaha akanavugisha ukuri nk'uko byemejwe mu rubanza nº RPA 00009/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/03/2021, aho rwasobanuye ko kuba HAVUGIMANA Emmanuel yaremeye icyaha mu bujurire kandi mbere yararanzwe no kugihakana, atari impamvu yamubuza kugabanyirizwa igihano, kuko nta gihe cyateganyijwe cyo gusubiza agatima impembero kugira ngo uregwa yiyemeze kwisubiraho akanavugisha ukuri nk'uko byanemejwe mu rubanza nº RPA0246/09/CA rwaciwe n'Urukiko rw'Ikirenga ku wa 14/12/2012, Ubushinjacyaha buburana na MUKANKUSI Victoire.

[9] Uhagarariye Ubushinjacyaha avuga ko MBARUSHIYEZE Théoneste atakongera kugabanyirizwa igihano kubera ko atemera icyaha ku buryo budashidikanywaho kuko avuga ko atigeze agambirira gukora icyaha, ko yari ajyanywe no kurwana na MBIHORERE François, kandi mu by'ukuri yari ajyanywe no kumwica kuko yashakaga kumukuraho umutwe, kandi ibikorwa yakoze bigize ubwinjaracyaha mu cyaha cy'ubwicanyi nk'uko bigaragazwa n'imvugo z'abatangabuhamya bari muri dosiye ye, ndetse n'imvugo uregwa yavugiye mu Bugenzacyaha igaragaraza ko yari afite ubushake bwo gukora icyaha cy'ubwicanyi.

[10] Ku bijyanye n'igihano, avuga ko MBARUSHIYEZE Théoneste atakongera kugabanyirizwa igihano kubera ko yakigabanyirijwe ku rwego rwa mbere, ahanishwa igifungo cy'imyaka cumi n'itanu (15) kandi yaragombaga guhanishwa igihano cya burundu.

UKO URUKIKO RUBIBONA

[11] Ku kibazo cyo kumenya itegeko rigomba gushingirwaho mu gusuzuma niba MBARUSHIYEZE Théoneste akwiye kongera kugabanyirizwa igihano cyangwa

kutakigabanyirizwa, ingingo ya 334, igika cya 2, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko "Icyakora, icyaha cyakozwe mbere y'uko iri tegeko ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda gihanwa hakurikijwe itegeko ryakigengaga keretse mu gihe iri tegeko riteganya ibihano byoroheje".

[12] Ingingo ya 30, igika cya mbere, y'Itegeko - Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, iteganya ko "Ubwinjira-cyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye bufatwa kimwe nk'icyaha cy'ubugome cyangwa icyaha gikomeye ubwacyo", bivuze rero ko ubwinjira-cyaha bw'ubwicanyi buhanishwa igifungo cya burundu hakurikijwe ibiteganywa n'iyo ngingo[1], naho ingingo ya 21, igika cya 3, y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, igateganya ko "Ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye buhanishwa kimwe cya kabiri (1/2) cy'igihano giteganyirijwe icyo cyaha. Ku cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha buhanishwa igihano cy'igifungo kingana n'imyaka makumyabiri n'itanu (25)".

[13] Hashingiwe ku biteganywa n'ingingo ya 334, igika cya 2, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 rimaze kuvugwa haruguru, Urukiko rusanga, ku bijyanye no kumenya niba MBARUSHIYEZE Théoneste akwiye kongera kugabanyirizwa ibihano cyangwa kutabigabanyirizwa, hatashingirwa ku Itegeko - Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, kuko riteganya ibihano biremereye bitewe n'uko riteganya ko uwakoze icyaha cy'ubwinjira-cyaha bw'ubwicanyi ashobora guhanishwa igifungo cya burundu[2], ko ahubwo hakwiye gushingirwa ku Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, kuko riteganya ibihano byoroheje bitewe n'uko riteganya ko uwakoze icyaha kimaze kuvugwa wari guhanishwa igifungo cya burundu, ahanishwa igifungo kingana n'imyaka makumyabiri n'itanu (25)[3].

[14] Na none ingingo ya 60, 1º, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, iteganya ko "Iyo hari impamvu zigabanya ububi bw'icyaha, ibihano bishobora kugabanywa ku buryo bukurikira: 1º haseguriwe ibiteganywa mu ngingo ya 107 igihano cyo gufungwa burundu gishobora kugabanywa ariko ntikijye munsi y'imyaka makumyabiri n'itanu (25)".

[15] Inyandiko ziri muri dosiye y'urubanza zigaragaza ko MBARUSHIYEZE Théoneste yahanishijwe igifungo cy'imyaka cumi n'itanu (15) n'Urukiko Rwisumbuye rwa Nyamagabe kubera ko ubwinjiracyaha yakoze bwagarukiye ku gutema MBIHORERE François ku kananwa, ariko aravurwa arakira, ndetse ko n'Urukiko Rukuru, Urugereko rwa Nyanza, rwahamishijeho icyo gihano kubera ko atemeye icyaha ngo anagisabire imbabazi.

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[1] Ingingo ya 140 y'Itegeko - Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ko "Kwica umuntu ubishaka byitwa ubwicanyi. Bihanishwa igifungo cya burundu".

[2] Ingingo ya 30, igika cya mbere y'Itegeko - Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ko "Ubwinjira-cyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye bufatwa kimwe nk'icyaha cy'ubugome cyangwa icyaha gikomeye ubwacyo", bivuze ko ubwinjira-cyaha bw'ubwicanyi buhanishwa igifungo cya burundu hakurikijwe ibiteganywa n'iyo ngingo.

[3] Ingingo ya 21, igika cya 3, y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko « Ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye buhanishwa kimwe cya kabiri (1/2) cy'igihano giteganyirijwe icyo cyaha. Ku cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha buhanishwa igihano cy'igifungo kingana n'imyaka makumyabiri n'itanu (25).

[16] Ku kibazo cyo kumenya niba MBARUSHIYEZE Théoneste ataragambiriye gukora icyaha nk'uko abiburanisha imbere y'uru Rukiko, inyandikomvugo ziri muri dosiye zigaragaza ko mu Bugenzacyaha, mu Bushinjacyaha no mu Rukiko Rwisumbuye rwa Nyamagabe, MBARUSHIYEZE Théoneste yemeye icyaha cy'ubwinjiracyaha bw'ubwicanyi anagisabira imbabazi, asobanura ko ku wa 15/01/2018, we na NYIRABAZIKI Jeannette na NTIHABOSE RUGAZI, bacuze umugambi wo kwica BIHORERE François bari mu ga Centre ka Rusanza, mu Gasenyi ka Musebeya, kugira ngo bamwambure amafaranga yari afite kubera ko yari aherutse kugurisha ishyamba no kugira ngo bamwambure amatungo ye banayagabane harimo n'isekurume y'ingurube yari yaratije NYIRABAZIKI Jeannette.

[17] MBARUSHIYEZE Théoneste yakomeje asobanura ko NYIRABAZIKI Jeannette na NTIHABOSE RUGAZI bamaze kumwemerera ibihumbi ijana (100.000 Frw) y'igihembo bazamuha amaze kwica MBIHORERE François, NYIRABAZIKI Jeannette yamuhaye umuhoro ajya kwicisha BIHORERE François, ko MBARUSHIYEZE Théoneste yagiye akinjira mu rugo rwa BIHORERE François, agezeyo, asanga yaryamye, aramuhamagara, akinguye ahita abangura umuhoro agiye kuwumutemesha mu mutwe ngo awukureho, BIHORERE François yawukwepye, aramuhusha, ariko umuhoro ufata ku kananwa ke karakomereka unamukomeretsa mu gatuza, bahita bagundagurana barwanira wa muhoro, ariko BIHORERE François amurusha imbaraga akomeza gutaka atabaza, noneho MBARUSHIYEZE Théoneste yumvise abantu bahuruye, ahita yiruka arahunga.

[18] Hari kandi abatangabuhamya bitwa IYAMUREMYE Justace na NZAMURAMBAHO Damien basobanuye mu Bugenzacyaha ko batabaye BIHORERE François mu gihe cya saa tatu z'ijoro (21h), basanga avirirana ku kananwa, yanakomeretse mu kwaha, ababwira ko ari MBARUSHIYEZE Théoneste umutemye, ndetse ko yanahataye umuhoro, indangamuntu ye, isitimu na "chargeur" ya telefoni ye.

[19] Urukiko rusanga imvugo MBARUSHIYEZE Théoneste yavugiye mu Nzego z'iperereza no mu Rukiko Rwisumbuye rwa Nyamagabe zavuzwe haruguru, zigaragaza ko yakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi giteganywa n'ingingo ya 21, igika cya mbere, y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru[4], kubera ko yashatse kwica BIHORERE François amutemesheje umuhoro kuko yawufashe akajya mu rugo rwa BIHORERE François agamije kumwica, ahageze, arawumutemesha, ariko abuzwa kugera ku cyifuzo cye bitamuturutseho kuko yashatse kumutema mu mutwe no kuwukuraho, ariko umuhoro ntiwahafata, ahubwo umukomeretsa ku kananwa ke unamukomeretsa mu gatuza igihe bagundaguranaga barwanira uwo muhoro, no kuba BIHORERE François yarakijijwe n'uko yamurushije imbaraga anatabarwa n'abaturage.

[20] Urukiko rusanga nk'uko n'Urukiko Rukuru rwabibonye, MBARUSHIYEZE Théoneste atakongera kugabanyirizwa igihano kubera ko atamera icyaha cy'ubwinjiracyaha bw'ubwicanyi yakoze mu buryo budashidikanywaho kubera ko avuga ko atari yagambiriye kugikora mu gihe

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[4] Ingingo ya 21, igika cya mbere, y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko « Ubwinjiracyaha buhanirwa iyo umugambi wo gukora icyaha wagaragajwe n'igikorwa kimwe cyangwa byinshi biboneka, bidashidikanywa by'intangiriro y'icyaha biganisha ku ikorwa ryacyo, nyuma bigahagarikwa, bikabuzwa kugera ku cyifuzo cyangwa bikazitirwa n'impamvu zidakomoka ku bushake bwa nyir'ugukora icyaha ». Naho igika cya 2 cy'iyo ngingo, kigateganya ko « Ubwinjiracyaha burahanirwa n'ubwo icyari kigambiriwe kitashoboraga kugerwaho bitewe n'impamvu nyir'ugukora icyaha atashoboye kumenya ».

imvugo yavugiye mu Nzego z'iperereza no mu Rukiko Rwisumbuye rwa Nyamagabe zavuzwe haruguru, zigaragaza ko yakoze icyo cyaha yakigambiriye nk'uko byasobanuwe haruguru, bivuze ko ubujurire bwe nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko ubujurire bwa MBARUSHIYEZE Théoneste nta shingiro bufite;

[22] Ruvuze ko imikirize y'urubanza RPA 00160/2018/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 28/06/2019, idahindutse;

[23] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta;