UBUSHINJACYAHA v. RWATAMBUGA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00018/2020/CA (Mukandamage, P.J.) 20 Gicurasi 2022]

Amategeko agenga imanza nshinjabyaha – Igihano – Mu gihe hari amategeko ahana, rimwe ryariho mu igihe icyaha cyakorwaga, irindi ryaratangajwe nyuma y'uko icyaha gikorwa, ariko urubanza rutaracibwa burundu, itegeko rishya ni ryo rikurikizwa iyo riteganya igihano cyoroheje.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga Ubushinjacyaha burega Rwatambuga icyaha cyo gusambanya umwana, buvuga ko ku wa 25/05/2018 igihe cya saa sita z'amanywa, ari mu ishyamba arimo gutemesha ibiti abirundamo amasiteri y'inkwi, umwana w'umukobwa witwa N. V. ufite imyaka 14 y'amavuko yamusanze muri iryo shyamba amwaka inkwi, amwemerera kuzitashya, arangije aramufata aramusambanya, hanyura umugore witahirizaga inkwi arabumva, agiye kureba asanga Rwatambuga arimo gusambanya uwo mwana, ahita ajya kubibwira abarera uwo mwana w'umukobwa nabo babimenyesha ubuyobozi, nuko uregwa arafatwa atangira gukorwaho iperereza. Uregwa yaburanye ahakana icyaha aregwa, ariko urwo Rukiko rwasanze hari ibimenyetso bifatika byerekana ko uregwa yasambanyije umwana N. V. nuko rwemeza ko ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka 25.

Uregwa yajuririye Urukiko Rukuru, Urugereko rwa Nyanza, avuga Urukiko Rwisumbuye rwa Muhanga rwamuhamije icyaha cyo gusambanya umwana kandi ataragikoze, ko ubuhamya bwashingiweho bugomba guteshwa agaciro. Urwo Rukiko rwaciye urubanza rwemeza ko rwemeza ko imikirize y'urubanza rwajuririwe idahindutse, ko igihano cy'igifungo cy'imyaka 25 yahanishijwe kigumyeho.

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire, avuga ko mu Rukiko Rukuru, Urugereko rwa Nyanza yatanze abatangabuhamya bazi ko igihe bavuga ko yasambanyije umwana atari mu ishyamba wenyine ariko rwanga kubatumiza cyangwa kujya kubakoraho iperereza.

Ubushinjacyaha bwo bwaburanye buvuga ko uregwa haba mu Rukiko Rwisumbuye rwa Muhanga, haba no mu Rukiko Rukuru, Urugereko rwa Nyanza uregwa atigeze agaragaza ko hari abatangabuhamya babazwa bakamushinjura, ko kubazana bwa mbere mu Rukiko rw'Ubujurire bidakwiriye guhabwa agaciro, kuko icyaha gikorwa yari wenyine, ibyo avuga ubu akaba ari ugushaka guhunga icyaha.

Incamake y'icyemezo: 1. Mu gihe hari amategeko ahana, rimwe ryariho mu igihe icyaha cyakorwaga, irindi ryaratangajwe nyuma y'uko icyaha gikorwa, ariko urubanza rutaracibwa burundu, itegeko rishya ni ryo rikurikizwa iyo riteganya igihano cyoroheje.

Ubujurire nta shingiro bufite.

Amategeko yakoreshejwe:

Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyahaku, ingingo ya 108.

Imanza zifashishijwe:
Ubushinjacyaha v. Ndahayo Ezéchiel, RPAA 00305/2021/CA rwaciwe n'urukiko Rw'Ubujurire ku wa 25/03/2022.
Ubushinjacyaha v. Bahati Claude, RPAA 00407/2020/ CA rwaciwe n'urukiko Rw'Ubujurire ku wa 28/01/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga Ubushinjacyaha burega RWATAMBUGA Jean Marie Vianney icyaha cyo gusambanya umwana, buvuga ko ku wa 25/05/2018 igihe cya saa sita z'amanywa, ari mu ishyamba arimo gutemesha ibiti abirundamo amasiteri y'inkwi, umwana w'umukobwa witwa N. V. ufite imyaka 14 y'amavuko, yamusanze muri iryo shyamba amwaka inkwi, amwemerera kuzitashya, arangije aramufata aramusambanya, hanyura umugore witahirizaga inkwi arabumva, agiye kureba asanga RWATAMBUGA Jean Marie Vianney arimo gusambanya uwo mwana, ahita ajya kubibwira abarera uwo mwana w'umukobwa nabo babimenyesha ubuyobozi, RWATAMBUGA Jean Marie Vianney arafatwa atangira gukorwaho iperereza.

[2] RWATAMBUGA Jean Marie Vianney yaburanye ahakana icyaha aregwa, avuga ko koko umwana N. V. yamusabye inkwi amubwira ko azitora akagenda, ariko ko yamusize mu ishyamba akigendera, ko umugore umushinja witwa KAMPIRE Françoise amubeshyera, icyo bapfa akaba ari uko yamwimye ibiti.

[3] Mu rubanza RP 00299/2018/TGI/MHG rwaciwe ku wa 03/12/2018, Urukiko Rwisumbuye rwa Muhanga rwasanze hari ibimenyetso bifatika byerekana ko RWATAMBUGA Jean Marie Vianney yasambanyije umwana N. V. birimo imvugo z'uwo mwana umushinja, ubuhamya bwa KAMPIRE Françoise wamubonye asambanya uwo mwana, raporo ya Muganga igaragaza ko umwana yasambanyijwe, maze rwemeza ko RWATAMBUGA Jean Marie Vianney ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka 25.

[4] RWATAMBUGA Jean Marie Vianney yajuririye Urukiko Rukuru, Urugereko rwa Nyanza, avuga Urukiko Rwisumbuye rwa Muhanga rwamuhamije icyaha cyo gusambanya umwana kandi ataragikoze, ko ubuhamya bwa KAMPIRE Françoise umushinja ko yamwiboneye asambanya umwana yamubeshyeye cyane, bukaba bugomba guteshwa agaciro, ko kandi iyo asambanyiriza umwana ahantu bamaze gutema ibiti byashoboraga kumukomeretsa, asaba kurenganurwa.

[5] Mu rubanza RPA 00528/2018/HC/NYZ rwaciwe ku wa 28/06/2019, Urukiko Rukuru, Urugereko rwa Nyanza, rwasanze ubujurire bwa RWATAMBUGA Jean Marie Vianney nta shingiro bufite, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse, ko igihano cy'igifungo cy'imyaka 25 yahanishijwe kigumyeho.

[6] RWATAMBUGA Jean Marie Vianney yajuriye Urukiko rw'Ubujurire, avuga ko mu Rukiko Rukuru, Urugereko rwa Nyanza yatanze abatangabuhamya bazi ko igihe bavuga ko

yasambanyije umwana atari mu ishyamba wenyine ariko rwanga kubatumiza cyangwa kujya kubakoraho iperereza.

[7] Ku itariki ya 04/05/2022 urubanza rwaburanishijwe mu ruhame RWATAMBUGA Jean Marie Vianney yunganiwe na Me RUGEYO Jean, naho Ubushinjacyaha buhagarariwe na RUDATINYA Nyangezi Gaspard Umushinjacyaha ku rwego rw'Igihugu, iburanisha rirangiye ababuranyi bamenyeshwa ko urubanza ruzasomwa ku itariki ya 20/05/2022, akaba ari nawo munsi rusomwe.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO:

Kumenya niba RWATAMBUGA Jean Marie Vianney yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho

[8] RWATAMBUGA Jean Marie Vianney avuga ko mu Rukiko Rukuru, Urugereko rwa Nyanza yasabye ko urwo Rukiko rwakora iperereza kuri NSENGIYUMVA bari kumwe igihe umwana N. V. yazaga gutashya, kuko yahabasanze barangiza bakahamusiga, bakajya muri Centre y'ubucuruzi ya Nteko aho basangiye inzoga na UWIMANA Jean na Karori bose batuye aho, ko iyo rukora iperereza rwari kubona ko atigeze asubira mu ishyamba mbere ya saa cyenda ngo abe ariho yakoze icyaha, ahubwo rugendera gusa ku buhamya bw'abamurega. Avuga kandi ko yasabye ko umutangabuhamya KAMPIRE Françoise umushinja yatumizwa agatanga ubuhamya imbona nkubone, kuko yanze kwitaba inzego z'ubuyobozi kuko azi ko amubeshyera, ariko nabyo ntibyakorwa.

[9] Akomeza avuga ko mu kumuhamya icyaha, Urukiko Rukuru, Urugereko rwa Nyanza rwashingiye no kuri raporo ya Muganga igaragaza ko yasanze umukobwa nta karangabusugi afite, ko kuba atagafite byonyine atari ikimenyetso kigaragaza ko ari we wamusambanyije. Asanga ahubwo Ubushinjacyaha bwari kwerekana ibimenyetso biri ku mubiri w'uwo mwana cyangwa ahandi, cyane cyane ko buvuga ko yamupfutse umunwa akamusambanyiriza aho yatemeraga ibiti, akaba atari kubura ibikomere. Asaba Urukiko rw'Ubujurire kumugira umwere ku cyaha aregwa, byaba ngombwa hakabazwa abatangabuhamya batumviswe yavuze haruguru.

[10] Me RUGEYO Jean, wunganira RWATAMBUGA Jean Marie Vianney, avuga ko ubuhamya bwatanzwe na KAMPIRE Françoise Urukiko Rukuru, Urugereko rwa Nyanza rwashingiyeho bushidikanywaho, kuko bitumvikana ukuntu yasanze umugabo atazi kandi wubitse inda ari gusambanya umukobwa nawe atazi yabakubita amaso agahita yiruka, ariko amaze kugera iyo yajyaga akemeza ko uwo mugabo yabonye atazi ari uwitwa RWATAMBUGA Jean Vianney kandi ataramwitegereje kuko yarafite ubwoba. Asanga rero izo mvugo ze zidakwiriye gufatwa nk'ikimenyetso kidashidikanywayo cyemeza nta shiti ko RWATAMBUGA Jean Marie Vianney yasambanyije umwana N. V.

[11] Ku byerekeye raporo ya Muganga yo ku wa 26/05/2018, Me RUGEYO Jean avuga ko ubwayo itagaragaza ko yaba yarasambanyijwe na RWATAMBUGA Jean Marie Vianney, ko kuba Muganga wapimye umwana yaravuze ko akarangabusugi kavuyeho, kandi nta dusebe twari mu gitsina, bitavuze ko ako karangabusugi kaciwe na RWATAMBUGA Jean Marie Vianney, ko no

kuba igitsina cye cyinjiramo urutoki bitavuze ko ari we wamusambanyije, agasaba Urukiko rw'Ubujurire gushingira ku ngingo ya 111 y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, maze rukamugira umwere ku cyaha aregwa.

[12] Uhagarariye Ubushinjacyaha avuga ko haba mu Rukiko Rwisumbuye rwa Muhanga, haba no mu Rukiko Rukuru, Urugereko rwa Nyanza, RWATAMBUGA Jean Marie atigeze agaragaza ko hari abatangabuhamya babazwa bakamushinjura, ko kubazana bwa mbere mu Rukiko rw'Ubujurirebidakwiriye guhabwa agaciro, kuko icyaha gikorwa yari wenyine, ibyo avuga ubu akaba ari ugushaka guhunga icyaha.

[13] Avuga na none ko raporo ya Muganga idatera gushidikanya, kuko igaragaza ko umwana N. V. w'imyaka 14 y'amavuko nta karangabusugi afite, kandi ko igitsina cye cyinjiramo urutoki, bikaba bigaragara ko ku myaka ye niba urutoki rw'umuntu mukuru rwinjira mu gitsina cye ntababare ari uko yasambanyijwe. Avuga kandi ko iyo raporo ya Muganga yunganirwa n'imvugo z'umwana wasambanyijwe wasobanuye neza uwamusambanyije ko ari RWATAMBUGA Jean Marie Vianney.

[14] Uhagarariye Ubushinjacyaha avuga kandi ko, haba mu Bugenzacyaha, mu Bushinjacyaha no mu Rukiko Rwisumbuye rwa Muhanga, RWATAMBUGA Jean Marie Vianney atigeze ahakana ko kuri iriya tariki ya 25/05/2018 igihe cya saa sita z'amanywa atabonanye n'uriya mukobwa.

[15] Ku bivugwa na RWATAMBUGA Jean Marie Vianney n'uwunganira ko imvugo za KAMPIRE Françoise ziteye gushidikanya, ko rero zateshwa agaciro, Uhagarariye Ubushinjacyaha avuga ko nta shingiro byahabwa, kubera ko ibyo uwo mutangabuhamya avuga ari uko yabonye umugabo wasambanyaga umwana N. V. mu ishyamba, ariko ko atigeze amuvuga izina, ahubwo ko uwo mwana ari we wasobanuye uwo mugabo uwo ari we, basanga ari RWATAMBUGA Jean Marie Vianney, ko n'ibyo kuvuga ko KAMPIRE Françoise atatabaje bitavanaho kuba RWATAMBUGA Jean Marie Vianney yarakoze icyaha, uretse ko yabikoze, kuko yahuye n'undi muntu bakagarukana kureba ibyo yabonye, bagasanga yagiye.

[16] Asanga rero RWATAMBUGA Jean Marie Vianney adashobora kugaragaza ibimenyetso bivuguruza ibyashingiweho n'Urukiko Rukuru, Urugereko rwa Nyanza mu kumuhamya icyaha, agasaba Urukiko rw'Ubujurire rwakwemeza ko ubujurire bwe nta shingiro bufite, maze hakagumaho imikirize y'urubanza rwajuririwe.

UKO URUKIKO RUBIBONA

- **Ku byerekeye itegeko rigomba gukurikizwa**

[17] Mu manza zitandukanye zaciwe n'uru Rukiko ku kibazo cyo kumenya itegeko rigomba gukurikizwa hagati y'Itegeko Ngenga n° 01/2010/OL ryo ku wa 02/06/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga icyaha gikorwa, n'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ryatangajwe nyuma y'uko icyaha gikorwa, ariko

urubanza rutaracibwa burundu, rwemeje ko itegeko rishya ari ryo rigomba gukurikizwa ku cyaha cyo gusambanya umwana, kubera ko ari ryo riteganya ibihano byoroheje[1].

- **Ku byerekeye ibimenyetso byashingiweho n'Urukiko Rukuru, Urugereko rwa Nyanza.**

[18] Ingingo ya 108 y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko "Ibimenyetso bishobora gushingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barabigiyeho impaka. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinja cyangwa bishinjura ari byo kandi bishobora kwemerwa".

[19] Ubujurire bwa RWATAMBUGA Jean Marie Vianney bugamije kugaragaza ko nta kimenyetso nyakuri gihari Urukiko Rukuru, Urugereko rwa Nyanza rwashingiyeho rumuhamya icyaha cyo gusambanya umwana ufite imyaka 14 y'amavuko, ko rero agomba kugirwa umwere, igihano yahawe kikavanwaho.

[20] Bigaragara mu rubanza rwajuririwe ko Urukiko Rukuru, Urugereko rwa Nyanza rwasuzumye ibimenyetso byatanzwe n'Ubushinjacyaha birimo imvugo z'umwana N. V. wasambanyijwe, ubuhamya bwatanzwe na KAMPIRE Françoise hamwe na raporo ya Muganga wasuzumye umwana wasambanyijwe, maze rusanga ibyo bimenyetso byashingiweho n'Urukiko Rwisumbuye rwa Muhanga rumuhamya icyaha bikwiye kugumana agaciro.

[21] Ku byerekeye imvugo y'umwana wasambanyijwe n'ubuhamya bwatanzwe na KAMPIRE Françoise, Urukiko Rukuru, Urugereko rwa Nyanza rwasanze uwo mwana yarasobanuye uburyo yasambanyijwe na RWATAMBUGA Jean Marie Vianney abanje kumupfuka umunwa ngo atavuza induru, anamutera ubwoba ko nabivuga azamwica, iyo mvugo ikaba yuzuzanya n'ubuhamywa bwa KAMPIRE Françoise wavuze ko yamwiboneye asambanya umwana ubwo yari anyuze mu ishyamba ari kujya iwe, ko kandi nta kigaragaza ko bari basanzwe baziranye cyangwa se ko baba barabanje kugira aho bahurira kugira ngo bumvikane ku byo bazavuga, ariko bakaba basobanura kimwe imikorere y'icyaha.

[22] Urukiko rwasanze ibyo RWATAMBUGA Jean Marie Vianney yavugaga ko ubuhamya bwa KAMPIRE Françoise budakwiye guhabwa agaciro kubera ko bafitanye amakimbirane ashingiye ku mpamvu y'uko yamwimye ibiti nta hingiro bifite, kuko ntakigaragaza ko byabayeho, ko kandi atari impamvu ifatika yatuma umuntu ahimbira undi icyaha nk'iki, runashingiye ku rubanza rwaciwe n'Urukiko rw'Ikirenga rusanga n'iyo ayao makimbirane yahaba nta mpamvu yatuma ubwo buhamya budasuzumwa.

[23] Urukiko rwabanje rwasanze kandi ibyo RWATAMBUGA Jean Marie Vianney yaburanishaga avuga ko iyo asambanyiriza umwana mu ishyamba yari gukomeretswa n'ibiti byatemwe nta shingiro bifite, kubera ko ishyamba ryose ritari ryuzuye ibintu bishobora gukomeretsa umuntu.

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[1] Reba imanza zikurikira:
- Urubanza nº RPAA 00305/2021/ca rwaciwe ku wa 25/03/2022, haburana Ubushinjacyaha na NDAHAYO Ezéchiel;
- Urubanza n° RPAA 00407/2020/ca rwaciwe ku wa 28/01/2022, haburana Ubushinjacyaha na BAHATI Claude.

[24] Urukiko rw'Ubujurire rurasanga ibyo RWATAMBUGA Jean Marie Vianney n'umwunganira bavuga ko Urukiko rwabanje rwashingiye ku buhamya bwa KAMPIRE Françoise bushidikanywaho kubera ko avuga ko yabonye umuntu atazi asambanya umwana nawe atazi yabakubita amaso agahita yiruka, ariko nyuma akemeza ko uwo yabonye atazi ari RWATAMBUGA Jean Vianney kandi ataramwitegereje kuko yarafite ubwoba, nta shingiro bifite, kuko mu mvugo ya NSENGIYUMVA Manassé wareraga uyu mwana iri muri dosiye, yavuze ko uwo mwana amaze gutinyuka kuvuga ibyamubayeho nka saa kumi z'amanywa, agasobanura ko hari n'umugore wabibonye aje gutashya inkwi RWATAMBUGA Jean Vianney agahita amuvaho akagenda, nawe yabimenye saa mbiri z'ijoro ahita ajya kubibwira Umukuru w'Umudugudu, bajya kubaza uwo mugore arabibemerera, maze bajya kubibwira Umunyamabanga Nshingwabikorwa w'Akagari, bajya mu ishyamba bazana abakoragamo bose, umwana ahita yerekana RWATAMBUGA Jean Vianney wamusambanyije baramufata, bikaba rero bigaragara ko atari KAMPIRE Françoise wavuze izina ry'uwakoze icyaha. NSENGIYUMVA Manassé yanavuze ko batari basanzwe bamuzi, ko yari yaje mu byo gutema ishyamba ari Kapita w'abakozi, nabyo bikaba byumvikanisha ko KAMPIRE Françoise Atari kumubeshyera kandi atamuzi.

[25] Ku birebana na raporo ya Muganga RWATAMBUGA Jean Marie Vianney n'umwunganira banenga bavuga ko itagaragaza ko umwana yasambanyijwe, Urukiko rw'Ubujurire rurasanga Muganga yaragaragaje ibyo yabonye ku mwana yasuzumwe ko nta karangabusugi afite, akaba atari afite inshingano zo kugaragaza ko umwana yasambanyijwe. Byongeye kandi iyo raporo ni ikimenyetso cyiyongera ku bindi byashingiweho n'Urukiko rwabanje kigaragaza ko umwana yahohotewe na RWATAMBUGA Jean Marie Vianney wafatiwe mu cyuho.

[26] Urukiko rw'Ubujurire rurasanga iperereza risabwa na RWATAMBUGA Jean Marie Vianney kuri uru rwego rw'ubujurire avuga ko yarisabye ariko ntitikorwe nta kuri kurimo, kuko ntaho bigaragara muri dosiye ko yigeze arisaba, kandi ntacyo ryafasha mu kugaragaza ukuri ku cyaha akurikiranyweho, kuko bigaragagara mu mvugo y'umwana wasambanyijwe no mu buhamya bwatanzwe ko icyaha yagikoze nta wundi muntu uhari mu bo bakoranaga mu ishyamba.

[27] Urukiko rw'Ubujurire rurasanga, rushingiye ku ngingo ya 108 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, no ku bimaze gusobanurwa, Ubujurire bwatanzwe na RWATAMBUGA Jean Marie Vianney nta shingiro bufite, bityo urubanza yajuririye rukaba rugomba kugumana agaciro mu ngingo zarwo zose.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwa RWATAMBUGA Jean Marie Vianney nta shingiro bufite;

[29] Rwemeje ko urubanza RPA 00006/2019/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 30/10/2019 rugumanye agaciro mu ngingo zarwo zose;

[30] Rutegetse ko igifungo cy'imyaka makumyabiri n'itanu (25) RWATAMBUGA Jean Marie Vianney yahanishijwe muri urwo rubanza ku cyaha cyo gusambanya umwana w'imyaka 14 yahamijwe kigumyeho;

[31] Ruvuze ko amafaranga y’amagarama y’urubanza aherera ku Isanduku ya Leta, kubera ko RWATAMBUGA Jean Marie Vianney afunze, akaba asonewe kuyatanga.