UBUSHINJACYAHA v. TUYISHIME

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00044/2020/CA (Kaliwabo, P.J.,) 22 Mata 2022]

Amategeko nshinjabyaha – Inyito y'icyaha – Biri mu bubasha bw'umucamanza guhuza ibikorwa bigize icyaha yaregewe n'inyito iteganywa n'Itegeko, kuba bikozwe ku rwego rw'ubujurire bikaba ntacyo bibangamiye ku burenganzira bw'uwajuriye igihe cyose bitaremereza igihano yahawe mu rubanza rujuririrwa.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Ubushinjacyaha bukurikiranyeho uregwa ubwinjiracyaha mu cyaha cyo kuroga, buvuga ko uregwa yatetse ibyo kurya agashyiramo umuti bita TIYODA wari ugenewe kwica udusimba mu ikawa, hanyuma abigaburira Kankindi (nyina umubyara) na murumuna we witwa Cyuzuzo, agamije kubica, kubw'amahirwe aba baravurwa barakira. Uregwa yaburanye yemera icyaha, avuga ko yabahaye uburozi kuko bamwanga, asaba kugabanyirizwa igihano kuko akiri muto kandi akaba aburana yemera icyaha. Urwo Rukiko rwaciye rubanza ruhamya uregwa ubwinjiracyaha mu cyaha cyo kuroga, rumuhanisha igifungo cy'imyaka makumyabiri (20).

Uregwa yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana avuga ko yahawe ibihano birebire kandi aburana yemera icyaha, asaba kugabanyirizwa igihano. Urwo Rukiko narwo rwasanze, uregwa atagomba kongera kugabanyirizwa igihano kubera ko yagabanyirijwe bihagije, rumugumisha ku gifungo cy'imyaka 20.

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire asaba kugabanyirizwa ibihano kuko ngo yemeye icyaha kuva agifatwa.

Ubushinjacyaha bwo bwaburanye busaba ko inyito y'icyaha yahinduka, ushinjwa agahamwa n'icyaha cyo kuroga ariko igihano kikaguma uko cyatanzwe kuko yagabanyirijwe bihagije. ko kuba abahawe uburozi batarapfuye ntacyo bihindura ku nyito y'icyaha cyo kuroga uregwa agomba gukurikiranwaho, ko kandi ntakibuza Urukiko rwajuririwe gutanga inyito ikwiranye n'imikorere y'icyaha.

Incamake y'icyemezo: 1. Biri mu bubasha bw'umucamanza guhuza ibikorwa bigize icyaha yaregewe n'inyito iteganywa n'Itegeko, kuba bikozwe ku rwego rw'ubujurire bikaba ntacyo bibangamiye ku burenganzira bw'uwajuriye igihe cyose bitaremereza igihano yahawe mu rubanza rujuririrwa, kuba Kankindi na Cyuzuzo bahawe uburozi na Tuyishime baravuwe bagakira, ntibikwiye kwitwa ubwinjiracyaha mu cyaha cyo kuroga ahubwo bigize icyaha cyo kuroga nyiri zina.

2. Kuba uregwa yaragabanyirijwe igihano hashingiwe ku kuba yemera icyaha, kuri uru rwego akwiye kugabanyirizwa biruseho kubera ingaruka nke zatewe n'icyaha yakoze, bityo igifungo cy'imyaka 20 yahanishijwe kikaba gisimbujwe igifungo cy'imyaka 10.

Urubanza ruhindutse ku birebana n'inyito y'icyaha n'igihano.

Amategeko yakoreshejwe:
Itegeko N° 68/2018 ryo ku wa 30/08/2018 rigena ibyaha n'ibihano muri rusange, Ingingo ya 49 n'iya 110.

Imanza zifashishijwe:

Ubushinjacyaha v. Gatwaza Paul René, RPAA 00611/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 21/02/2021.
Ubushinjacyaha **v.** Kabalisa Alexis**,** RPAA 00575/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 08/11/2019

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Ubushinjacyaha bukurikiranyeho TUYISHIME Emeline ubwinjiracyaha mu cyaha cyo kuroga, buvuga ko tariki 25/02/2019 saa moya z'umugoroba(19h00), TUYISHIME Emeline yatetse ibyo kurya agashyiramo umuti bita TIYODA wari ugenewe kwica udusimba mu ikawa, hanyuma abigaburira KANKINDI Espérance (nyina umubyara) na murumuna we witwa CYUZUZO, agamije kubica, kubw'amahirwe aba baravurwa barakira.

[2] TUYISHIME Emeline yaburanye yemera icyaha, avuga ko yabahaye uburozi kuko bamwanga, asaba kugabanyirizwa igihano kuko akiri muto kandi akaba aburana yemera icyaha. Mu rubanza RP 00228/2019/TGI/NGOMA rwaciwe kuwa 04/04/2019, Urukiko rwahamije TUYISHIME Emeline ubwinjiracyaha mu cyaha cyo kuroga, rumuhanisha igifungo cy'imyaka makumyabiri (20).

[3] TUYISHIME Emeline yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana avuga ko yahawe ibihano birebire kandi aburana yemera icyaha, asaba kugabanyirizwa igihano. Urukiko, mu rubanza RPA 00315/2019/HC/RWG rwaciwe kuwa 06/12/2019, rwasanze TUYISHIME Emeline atagomba kongera kugabanyirizwa igihano kubera ko yagabanyirijwe bihagije, rumugumisha ku gifungo cy'imyaka 20.

[4] TUYISHIME Emeline, yunganiwe na Me NTAZIKA Néhemie, yajuririye Urukiko rw'Ubujurire asaba kugabanyirizwa ibihano kuko yemeye icyaha kuva agifatwa.

[5] Ubushinjacyaha buhagarariwe na NIYONZIMA Vincent, Umushinjacyaha ku Rwego rw'Igihugu, bwasabye ko inyito y'icyaha yahinduka, ushinjwa agahamwa n'icyaha cyo kuroga ariko igihano kikaguma uko cyatanzwe kuko yagabanyirijwe bihagije.

[6] Ku ngingo yo guhindura inyita y'ikirego, Me Ntazika avuga ko bidakwiye guhinduka kuko Ubushinjacyaha butabijuririye.

[7] Urubanza rurasuzuma ibirebana n'inyito y'icyaha n'ibijyanye n'igabanyagihano risabwa n'ushinjwa.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

A. Ku birebana n'inyito y'icyaha

[8] Ubushinjacyaha bwasabye Urukiko guhindura inyito y'icyaha maze TUYISHIME washyize uburozi mu biryo agahanirwa icyaha cyo kuroga aho kuba ubwinjiracyaha mu cyaha cyo kuroga kuko ingingo ya 110 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 rigena ibyaha n'ibihano muri rusange iteganya ko icyaha cyo kuroga kiba cyuzuye igihe cyose umuntu ahaye undi ibintu bishobora kwica hatitawe ku nkurikizi zabyo. Ubushinjacyaha bwavuze ko kuba abahawe uburozi batarapfuye ntacyo bihindura ku nyito y'icyaha cyo kuroga TUYISHIME agomba gukurikiranwaho, ko kandi ntakibuza Urukiko rwajuririwe gutanga inyito ikwiranye n'imikorere y'icyaha.

[9] Me NTAZIKA Néhemie wunganiye TUYISHIME Emeline yavuze ko inyito yahawe icyaha kuva kiregewe ariyo igomba kugumaho kuko Ubushinjacyaha buzamura iki kibazo butigeze bujurira bityo ko byaba bisa no kuzana ikirego gishya ku rwego rw'ubujurire.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 110 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 rigena ibyaha n'ibihano muri rusange iteganya ko umuntu uha undi ibintu bishobora kwica bwangu cyangwa bitinze, hatitawe ku byakoreshejwe cyangwa uko byahawe nyir'ukubigirirwa n'inkurikizi zabyo aba akoze icyaha cyo kuroga kandi ko ahanishwa igifungo cya burundu.

[11] Urukiko rurasanga, TUYISHIME wemera icyaha cyo kuba yarashyize uburozi (TIYODA) mu byo kurya akanabigaburira abantu, yararezwe ubwinjiracyaha mu cyaha cyo kuroga hashingiwe ku kuba abarozwe baravuwe bagakira, icyo akaba ari nacyo cyaha yahamijwe n'inkiko. Rurasanga iyi nyito ihabanye n'ibiteganywa mu ngingo ya 110 y'Itegeko N° 68/2018 ryavuzwe haruguru kuko icyaha cyo kuroga kiba cyuzuye igihe cyose umuntu yahaye undi muntu, abizi neza, ibintu bishobora kwica bwangu cyangwa bitinze, hatitawe ku nkurikizi zibaye k'uwabihawe.

[12] Urukiko rurasanga kuba KANKINDI na CYUZUZO bahawe uburozi na TUYISHIME baravuwe bagakira, bidakwiye kwitwa ubwinjiracyaha mu cyaha cyo kuroga ahubwo bigize icyaha cyo kuroga nyiri zina, iki akaba aricyo cyaha TUYISHIME akwiye gukurikiranwaho.

[13] Urukiko rurasanga biri mu bubasha bw'umucamanza guhuza ibikorwa bigize icyaha yaregewe n'inyito iteganywa n'Itegeko, kuba bikozwe ku rwego rw'ubujurire bikaba ntacyo bibangamiye ku burenganzira bw'uwajuriye igihe cyose bitaremereza igihano yahawe mu rubanza rujuririrwa. Rurasanga iki gitekerezo ari nacyo cyafashwe mu rubanza RPAA 00611/2021/CA rwaciwe n'uru Rukiko ku wa 21/02/2021 haburana Ubushinjacyaha na GATWAZA Paul René.

B. Ku birebana n'igabanyagihano risabwa na TUYISHIME Emeline

[14] Tuyishime yajuriye asaba kugabanyirizwa igihano kubera ko yemeye icyaha kuva agifatwa kandi ko akiri muto, bityo ko igifungo cy'imyaka 20 cyagabanywa.

[15] Me NTAZIKA Néhemie umwunganira yavuze ko nubwo TUYISHIME yakoze icyaha arengeje imyaka 18 akaba agomba kugihanirwa nyamara ko hakwitabwa ko akiri umukobwa muto ugereranyije n'igihano yahawe. Yavuze kandi ko TUYISHIME yaburanye yemera icyaha kuva agifatwa bityo akaba yagabanyirizwa kugeza ku gifungo cy'imyaka 10. Yasabye ko mu kugabanya igihano, Urukiko rwazashingira ku rubanza RPAA 00032/2019/CA rw'Ubushinjacyaha na NZAFASHWANIMANA Jean de Dieu rwaciwe n'uru Rukiko ku wa 28/02/2020.

[16] Ubushinjacyaha bwaburanye buvuga ko TUYISHIME watanze uburozi afite imyaka irenga 18, yakoze ibyo azi neza, ko atagomba kwitwaza ko yashutswe cyangwa ko yari akiri muto. Bwaburanye buvuga kandi ko Urukiko rwamugabanyirije bihagije kubera ko yahanishijwe igifungo cy'imyaka 20 mu mwanya w'imyaka 25 hakurikijwe icyaha yari yarezwe, busaba ko igihano yahawe cyagumaho.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 110 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 rigena ibyaha n'ibihano muri rusange iteganya ko umuntu uhamwe n'icyaha cyo kuroga ahanishwa igifungo cya burundu.

[18] Ingingo ya 49 y'Itegeko N° 68/2018 rivuzwe haruguru ivuga ibigomba gushingirwaho mu gihe umucamanza agena igihano, kimwe muri byo akaba ari ingaruka zikomoka ku cyaha

[19] Urukiko rurasanga KANKINDI na CYUZUZO bahawe uburozi, baravuwe bagakira ndetse ntihagire n'ubumuga runaka basigarana, ibyo bikaba byaragombaga kwitabwaho mu kugenera igihano TUYISHIME Emeline kuko igifungo cy'imyaka 20 gihambaye ugereranyije n'ingaruka zatewe n'icyaha yakoze. Ikigitekerezo kiboneka mu manza zitandukanye zaciwe n'uru Rukiko harimo urubanza RPAA 00575/2018/CA rwaciwe ku wa 08/11/2019 haburana Ubushinjacyaha na KABALISA Alexis.

[20] Urukiko rurasanga TUYISHIME Emeline wagabanyirijwe igihano hashingiwe ku kuba yemera icyaha, kuri uru rwego akwiye kugabanyirizwa biruseho kubera ingaruka nke zatewe n'icyaha yakoze, bityo igifungo cy'imyaka 20 yahanishijwe kikaba gisimbujwe igifungo cy'imyaka 10.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko urubanza RPA 00315/2019/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, kuwa 06/12/2019 ruhindutse ku birebana n'inyito y'icyaha n'igihano TUYISHIME Emeline yahanishijwe;

[22] Rwemeje ko TUYISHIME Emeline ahamwa n'icyaha cyo kuroga;

[23] Ruhanishije TUYISHIME Emeline igifungo cy'imyaka icumi (10);

[24] Rutegetse ko TUYISHIME Emeline asonerwa amagarama y'urubanza kuko yaburanye afunzwe.