UBUSHINJACYAHA v BUTERA

[Rwanda URUKIKO RW'UBUJURIRE - RPAA 00147/2022/CA (Umugwaneza, P.J.) 17 Kamena 2022]

Amategeko agenga imanza z'inshinjabyaha – Inshingano y'ubushinjacyaha y'ukugaragaza ibimenyetso – Icyaha cyo kunywa, gufatanwa no gucuruza ibiyobyabwenge – Kugira ngo hagaragare itandukaniro riri hagati yo kugira ibiyobyabwenge ugamije kubyikoreshereza no kubigira ugamije ubucuruzi bwabyo (simple drug possession vs drug trafficking) ubushinjacyaha bufite inshingano yo kugaragaza ko uregwa afite ibiyobyabwenge, yabigurishije cyangwa yaragamije kubigurisha hakanagaragazwa ibimenyetso byerekana ko ubucuruzi bw'ibiyobyabwenge buriho koko k'uwabifatanywe.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Butera Gedeon icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo, buvuga ko ku wa 23/01/2020 saa kumi n'igice (16h:30) yafatiwe ku mupaka wa petite barrière ho mu Karere ka Rubavu afite urumogi udupfunyika makumyabiri na tubiri (22) yari yambukanye arukuye i Goma muri Repubulika Iharanira Demokarasi ya Congo (DRC). Mbere y'uko urubanza ruburanishwa mu mizi, Butera yazamuye inzitizi y'iburabusha bw'Urukiko, avuga ko urumogi yafatanywe rwari urwo kunywa kandi ko icyaha cyo gufatanwa no kunywa ibiyobyabwenge kiri mu bubasha bw'inkiko z'ibanze, bityo ko Urukiko rw'Ibanze rwa Gisenyi arirwo rufite ububasha bwo kumuburanisha ku rwego rwa mbere. Urukiko Rwisumbuye rwa Rubavu rwabanje gusuzuma iyo nzitizi maze rwemeza ko ari rwo rufite ububasha bwo kumuburanisha ku rwego rwa mbere, ruburanisha urubanza mumizi rwemeza ko Butera Gedeon ahamwa n'icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nkabyo kigizwe n'igikorwa cyo gucuruza ikiyobyabwenge cy'urumogi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi magana atanu (20.500.000 Frw).

Butera yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko rwisumbuye rwa Rubavu ntacyo rwashingiyeho mu kwemeza ko habayeho igikorwa cyo gucuruza ibiyobyabwenge kuko urumogi yafatanywe atari agamije kurucuruza, ko rwari urwo kunywa, asaba ko inyito y'icyaha yahinduka, asaba kandi ko yagabanyirizwa ibihano, maze Urukiko Rukuru rwemeza ko icyifuzo cya Butera cyo guhindura inyito y'icyaha nta shingiro gifite kuko icyaha yahamijwe ari cyo gihura n'ibikorwa yakoze runavuga ko adakwiye kongera kugabanyirizwa igihano kuko yahawe igihano gito ugereranyije n'icyaha yakoze cyo gucuruza urumogi kuko yashoboraga guhanishwa igifungo cya burundu n'ihazabu ya miliyoni mirongo itatu z'amafaranfa y'u Rwanda (30.000.000 Frw) nyamara ahanishwa igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi magana atanu (20.500.000 Frw), rwemeza ko ubujurire bwe nta shingiro bufite, ko imikirize y'urubanza yajuririye igumyeho.

Butera ntiyishimiye imikirize y'urubanza, yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, avuga ko hashingiwe ku bikorwa bigize icyaha yahamijwe, inkiko zabanje zamuciriye urubanza rutari mu bubasha bwazo ko yari akwiye gukurikiranwa n'Urukiko rw'Ibanze, asaba ko ikirego cyoherezwa mu Rukiko rubifitiye ububasha rukamuburanisha ku rwego rwa mbere. Butera Gedeon n'umwunganizi we bakomeje basobanura ko yavuye iwabo i Kayonza ajya kwiga muri Kaminuza ya INES Ruhengeri, agezeyo abo yahanze bamwigisha kunywa urumogi, ageze aho abasaba kujya kumwereka aho barukura, bamujyana muri Repubulika Iharanira Demokarisi ya Congo (DRC), bagezeyo bararunywa mu gutaha atahana udupfunyika makumyabiri na tubiri (22) rwo kuzajya anywa, ageze ku mupaka ararufatanwa atangira gukurikiranwa, akimara gufatwa yemera icyaha cyo gufatanwa no kunywa ibiyobyabwenge by'urumogi, asobanura ko urumogi yafatanwe rutari urwo

gucuruza cyangwa gutunda ahubwo ari urwo kunywa, Urukiko Rwisumbuye rwa Rubavu rumuhamya icyaha cyo gucuruza ibiyobyabwenge, ajuririye Urukiko Rukuru, Urugereko rwa Musanze rumuhamya icyaha cyo gutunda ibiyobyabwenge, akaba yarajuririye Urukiko rw'Ubujurire asaba ko rwamukuraho icyaha cyo gutunda ibiyobyabwenge kuko urumogi yafatanywe rwari urwo kunywa.

Ubushinjacyaha busobanura ko ibivugwa n'uregwa nta shingiro bifite kuko kuba bavuga ko Urukiko Rwisumbuye rwa Rubavu rwamuhamije icyaha cyo gucuruza urumogi, nyuma Urukiko Rukuru, Urugereko rwa Musanze rukaza guhindura inyito y'icyaha rukamuhamya gutunda urumogi, nta kosa rwakoze kuko rwasanze ibikorwa byakozwe bihura no gutunda ibiyobyabwenge, kuko Urukiko ruregerwa ibikorwa rutaregerwa inyito y'icyaha kandi ko harebwe uko icyaha cyakozwe Butera yafashwe avanye urumogi mu gihugu cya Congo nk'uko nawe ubwe yabyiyemereye ndetse akaba yemera ko atari inshuro ya mbere avanayo urumogi akarujyana i Musanze aho yiga, bityo rero ko icyaha yakoze cyo gutunda urumogi kiri mu bubasha bw'Urukiko Rwisumbuye. Bukomeza buvuga ko gutunda bitagombera kuba utunda abikoze incuro nyinshi, ahubwo ko gutunda ari ukuvana ikintu ahantu ukakijyana ahandi kandi akaba aribyo Butera Gedeon yakoze.

Incamake y'icyemezo: 1. Kugira ngo hagaragare itandukanira riri hagati yo kugira ibiyobyabwenge ugamije kubyikoreshereza no kubigira ugamije ubucuruzi bwabyo (simple drug possession vs drug trafficking) ubushinjacyaha bufite inshingano yo kugaragaza ko uregwa afite ibiyobyabwenge, yabigurishije cyangwa yaragamije kubigurisha hakanagaragazwa ibimenyetso byerekana ko ubucuruzi bw'ibiyobyabwenge buriho koko k'uwabifatanywe. Bityo ingano y'urumogi uregwa yafatangwe bigaragara ko ari ruke ku buryo rukwiriye gufatwa ko rwari urwo kwinywera.

Ikirego cy'ubujurire gifite ishingiro,
Urubanza rwajuririwe ruhindutse mungingo zarwo zose.

Amategeko yakoreshejwe:
Itegeko Nº 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 11.

Imanza zifashishijwe:
Ubushinjacyaha v. Musabyimana Elysée Sybillin, RPAA 000156/2012/CA rwaciwe n'Urukiko rw'Ubujurire.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bwareze Butera Gedeon bumukurikiranyeho icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo, buvuga ko ku wa 23/01/2020 saa kumi n'igice (16h:30) yafatiwe ku mupaka wa petite barrière ho mu Karere ka Rubavu afite urumogi udupfunyika makumyabiri na tubiri (22) yari yambukanye arukuye i Goma muri Repubulika Iharanira Demokarasi ya Congo (DRC), akorerwa dosiye aregerwa Urukiko.

[2] Mbere y'uko urubanza ruburanishwa mu mizi, Butera Gedeon yazamuye inzitizi y'iburabusha bw'Urukiko, avuga ko urumogi yafatanywe rwari urwo kunywa kandi ko icyaha cyo gufatanwa no kunywa ibiyobyabwenge kiri mu bubasha bw'inkiko z'ibanze, bityo ko Urukiko rw'Ibanze rwa Gisenyi arirwo rufite ububasha bwo kumuburanisha ku rwego rwa mbere.

[3] Ku wa 18/03/2021, Urukiko rwafashe icyemezo mu rubanza rubanziriza urundi, rwemeza ko icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo Butera Gedeon aregwa kigizwe n'ibikorwa byo gutunda no gucuruza ibiyobyabwenge giteganywa kandi kigahishwa ingingo ya 11 y'Itegeko Nº 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange1, bityo ko Urukiko Rwisumbuye rwa Rubavu ari rwo rufite ububasha bwo kumuburanisha ku rwego rwa mbere.

[4] Ku bijyanye n'urubanza mu mizi, Butera Gedeon yaburanye avuga ko urumogi yafatanywe atari urwo gutunda cyangwa gucuruza ahubwo rwari urwo kunywa. Ku wa 29/04/2021, Urukiko rwaciye urubanza nº RP 00090/2020/TGI/RBV, rwemeza ko Butera Gedeon ahamwa n'icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nkabyo kigizwe n'igikorwa cyo gucuruza ikiyobyabwenge cy'urumogi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi magana atanu (20.500.000 Frw).

[5] Butera Gedeon yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko rwisumbuye rwa Rubavu ntacyo rwashingiyeho mu kwemeza ko habayeho igikorwa cyo gucuruza ibiyobyabwenge kuko urumogi yafatanywe atari agamije kurucuruza, ko rwari urwo kunywa, asaba ko inyito y'icyaha yahinduka, asaba kandi ko yagabanyirizwa ibihano.

[6] Ku wa 22/02/2022, Urukiko rwaciye urubanza n˚ RPA 00505/2021/HC/MUS, rusanga icyifuzo cya Butera Gedeon cyo guhindura inyito y'icyaha nta shingiro gifite kuko icyaha yahamijwe ari cyo gihura n'ibikorwa yakoze, rusanga kandi adakwiye kongera kugabanyirizwa igihano kuko yahawe igihano gito ugereranyije n'icyaha yakoze cyo gucuruza urumogi kuko yashoboraga guhanishwa igifungo cya burundu n'ihazabu ya miliyoni mirongo itatu z'amafaranfa y'u Rwanda (30.000.000 Frw) nk'uko biteganywa n'ingingo ya 263 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, nyamara ahanishwa igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi magana atanu (20.500.000 Frw), rwemeza ko ubujurire bwe nta shingiro bufite, ko imikirize y'urubanza yajuririye igumyeho.

[7] Butera Gedeon yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, avuga ko hashingiwe ku bikorwa bigize icyaha yahamijwe, inkiko zabanje zamuciriye urubanza rutari mu bubasha bwazo ko yari akwiye gukurikiranwa n'Urukiko rw'Ibanze, asaba ko ikirego cyoherezwa mu Rukiko rubifitiye ububasha rukamuburanisha ku rwego rwa mbere.

[8] Urubanza rwabunishijwe mu ruhame ku wa 06/05/2022, Butera Gedeon yunganiwe na Me Munyemana G. Pascal naho Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice, Umushinjacyaha ku rwego rw'igihugu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba Butera Gedeon yarahamijwe icyaha atakoze kandi akaba yaraburanishinjwe n'Urukiko rutabifitiye ububasha n'ingaruka byagira ku gihano

- **Imiburanire ya Butera Gedeon**

[9] Butera Gedeon na Me Munyemana G. Pascal umwunganira bavuga ko Butera Gedeon yavuye iwaba i Kayonza ajya kwiga muri Kaminuza ya INES Ruhengeri, agezeyo abo yahanze bamwigisha kunywa urumogi, ageze aho abasaba kujya kumwereka aho barukura, bamujyana muri Repubulika Iharanira Demokarisi ya Congo (DRC), bagezeyo bararunywa mu gutaha atahana udupfunyika makumyabiri na tubiri (22) rwo kuzajya anywa, ageze ku mupaka ararufatanwa atangira

gukurikiranwa, akimara gufatwa yemera icyaha cyo gufatanwa no kunywa ibiyobyabwenge by'urumogi, asobanura ko urumogi yafatanwe rutari urwo gucuruza cyangwa gutunda ahubwo ari urwo kunywa, Urukiko Rwisumbuye rwa Rubavu rumuhamya icyaha cyo gucuruza ibiyobyabwenge, ajuririye Urukiko Rukuru, Urugereko rwa Musanze rumuhamya icyaha cyo gutunda ibiyobyabwenge, akaba yarajuririye Urukiko rw'Ubujurire asaba ko rwamukuraho icyaha cyo gutunda ibiyobyabwenge kuko urumogi yafatanywe rwari urwo kunywa.

[10] Basobanura ko Butera Gedeon aburana mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bwari bwamusabiye igihano cy'igifungo cy'imyaka ibiri (2) mu nyandiko ikubiyemo ikirego (acte d'accusation), ageze mu Rukiko agaragaza ko Urukiko rufite ububasha bwo kumuburanisha ari Urukiko rw'Ibanze rwa Gisenyi, mu rubanza rubanziriza urundi rwo ku wa 18/03/2021 hafatwa icyemezo ku bubasha bw'Urukiko rwaregewe, hemezwa ko habayeho igikorwa cyo gucuruza urumogi, ko Urukiko Rwisumbuye rwa Rubavu arirwo rufite ububasha bwo kumuburanisha, ariko ko Urukiko ntacyo rwashingiyeho rubyemeza gutyo mu gihe ibyo rwahamije BUTERA Gedeon binyuranye n'ibyo yarezwe.

[11] Bakomeza bavuga ko ku wa 13/04/2021 hakozwe indi nyandiko ikubiyemo ikirego Ubushinjacyaha buvuga ko bukurikiranye Butera Gedeon ku cyaha cyo gucuruza urumogi, Urukiko Rwisumbuye rwa Rubuva narwo rurabyemeza kandi ntacyo rushingiyeho kuko igikorwa cy'ubucuruzi ari igikorwa gifite ibikigize ndetse gikwiye no kugira ibimenyetso bicyemeza nta shiti, cyane ko n'abatangabuhamya ruvuga mu gika cya 10 cy'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ari abemeza ko babonye afatanywa urumogi ndetse bigakorerwa inyandikomvugo y'ifatira, nyamara Urukiko Rwisumbuye rwa Rubavu rukaba nta kintu na kimwe rwashingiyeho mu kwemeza icyo gikorwa cy'ubucuruzi.

[12] Basoza bavuga ko Butera Gedeon yajuririye Urukiko Rukuru, Urugereko rwa Musanze narwo ruragenekereza, aho mu gika cya 7 cy'urubanza rujuririrwa Umucamanza yavuze ko ibyo kunywa urumogi ari ibyo Butera Gedeon yivugiye ko nta kimenyetso kibigaragaza, yemeza ko icyaha yakoze ari ukurutunda, nyamara gutunda atari igikorwa cy'umunsi umwe, ahubwo ari igikorwa gihoraho, byongeye kandi Umucamanza nawe akaba yari amaze gusobanura ko itegeko ritigeze risobanura igikorwa cyo gutunda ibiyobyabwenge, ibyo bikaba bigaragaza ko habayeho kugenekereza, bikaba binyuranye n'ingingo ya 4 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.[1]

- **Imiburanire y'Ubushinjacyaha**

[13] Ubushinjacyaha buvuga ko ibivugwa na Butera Gedeon n'uwunganzi we nta shingiro bifite kuko kuba bavuga ko Urukiko Rwisumbuye rwa Rubavu rwamuhamije icyaha cyo gucuruza urumogi, nyuma Urukiko Rukuru, Urugereko rwa Musanze rukaza guhindura inyito y'icyaha rukamuhamya gutunda urumogi, nta kosa rwakoze kuko rwasanze ibikorwa byakozwe bihura no gutunda ibiyobyabwenge kandi bikaba biteganywa n'ingingo ya 263, igika cya 3 y'itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange,[2] kuko Urukiko ruregerwa ibikorwa rutaregerwa inyito y'icyaha kandi ko harebwe uko icyaha cyakozwe Butera Gedeon yafashwe avanye urumogi mu gihugu cya Congo nk'uko nawe ubwe yabyiyemereye ndetse akaba yemera ko atari inshuro ya mbere avanayo urumogi akarujyana i Musanze aho yiga, bityo rero ko icyaha yakoze cyo gutunda urumogi kiri mu bubasha bw'Urukiko Rwisumbuye.

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[1] Iteganya ko "Amategeko ahana agomba gufatwa uko ateye, ntashobora gukoreshwa ku buryo butandukira. Inkiko zibujijwe guca imanza ku buryo bugenekereje".

2 iteganya ko: «Umuntu wese ukora, uhinga, uhindura, utunda, ubika, uha undi, ugurisha mu gihugu ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo mu buryo bunyuranije n'amategeko, aba akoze icyaha".

[14] Ubushinjacyaha buvuga ko gutunda bitagombera kuba utunda abikoze incuro nyinshi, ahubwo ko gutunda ari ukuvana ikintu ahantu ukakijyana ahandi, ko rero ibyo Butera Gedeon yakoze ari ugutunda ibiyobyabwenge by'urumogi kuko yaruvanye muri Congo aruzana mu Rwanda kandi nawe akaba abyemera, kandi ko icyo cyaha aricyo yakurikiranyweho kuva yatangira gukurikiranwa nk'uko bigaragara mu nyandikomvugo y'ibazwa rye mu Bugenzacyaha ku kibazo cya gatatu (3), ko nta kugenekereza kwabayeho kuko Butera Gedeon ubwe yemera ko yafatanwe urumogi aruvanye muri Congo arujyanye i Musanze.

UKO URUKIKO RUBIBONA

[15] Ubujurire bwa Butera Gedeon bugamije kunenga ko ku rwego rwa mbere yaburanishijwe n'Ukiko rutabifitiye ububasha, bitewe n'uko ibikorwa yakoze kandi yemera bigize icyaha cyo gufatanwa no kunywa ibiyobyabwenge kiri mu bubasha bw'Urukiko rw'Ibanze, ariko akaba yaraburanishijwe ku rwego rwa mbere n'Urukiko Rwisumbuye rwa Rubavu rumuhamya icyaha cyo gucuruza ibiyobyabwenge, ajuriye mu Rukiko Rukuru, Urugereko rwa Musanze ruca urubanza mu buryo bugenekereje rumuhamya icyaha cyo gutunda ibiyobyabwenge.

[16] Umuryango w'Abibumbye ushinzwe ibiyobyabwenge no kurwanya ibyaha byabyo (United Nations Office on Drugs and Crime,) usobanura ko, "ubucuruzi bw'ibiyobyabwenge, ari ubucuruzi bubujijwe kw'isi hose burimo; guhinga, gukora, gukwirakwiza no kugurisha ibintu bishobora gufatwa nk'ikiyobyabwenge bibujijwe n'amategeko".[3]

[17] Ku byerekeranye n'ibyaha byo gukora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo mu Rwanda, ingingo ya 11 y'Itegeko n° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, yahinduye ingingo ya 263 iteganya ko « (...) "Umuntu wese ufatanwa, urya, unywa, witera, uhumeka cyangwa wisiga mu buryo ubwo aribwo bwose ibiyobyabwenge bito cyangwa urusobe rw'imiti ikoreshwa nka byo, aba akoze icyaha. Umuntu wese uhamijwe n'urukiko gukora ibikorwa bivugwa mu gika cya mbere cy'iyi ngingo, ahanishwa igifungo kitari munsi y'umwaka umwe (1) ariko kitarenze imyaka ibiri (2) cyangwa imirimo y'inyungu rusange. Umuntu wese ukora, uhinga, uhindura, utunda, ubika, uha undi, ugurisha mu gihugu ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo mu buryo bunyuranije n'amategeko, aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda arenze miliyoni makumyabiri (20.000.000 FRW) ariko atarenze miliyoni mirongo itatu (30.000.000 FRW) ku byerekeye ibiyobyabwenge bihambaye;

[18] Ingingo y'itegeko rivuzwe haruguru, yumvikanisha ko abakora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo bashyizwe mu nzego (categories) ebyiri; urwego rwambere, ni urwego rw'ababa bafite ibiyobyabwenge (drug possesion) bagamije kubikoresha bo ubwabo, urwego rwa kabiri rukaba ari urwego rw'abakora ibikorwa byerekeranye n'ibiyobyabwenge ariko bijyanye n'ubucuruzi bwabyo (drug trafficking), byumvikana ko igikorwa cyose kivugwa mu rwego rwa kabiri ugikora ntakindi yaba agamije usibye ubucurizi bwabyo.

[19] Kubirebana n'ibimenyetso mu manza z'ibiyobyabwenge, abanyamategeko bo muri Feldman Royale Attorney at Law Pllc, mu kumvikanisha itandukanira riri hagati yo kugira ibiyobyabwenge ugamije kubyikoreshereza no kubigira ugamije ubucuruzi bwabyo (simple drug possession vs drug trafficking) basobanura ibimenyesto byashingirwaho. Bavuga ko ubushinjacyaha (Leta) aribwo bufite

3 Drug trafficking is a global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws". Available at: https://www.un.org/ruleoflaw/thematic-areas/transnational-threats/drug-trafficking/
visited on 20/06/2022.

inshingano yo kugaragaza ko uregwa afite ibiyobyabwenge, yabigurishije cyangwa yaragamije kubigurisha. Bakomeza basobanura ko iyo urubanza rudafite ibimenyetso bigaragaza ko hari ubucuruzi buriho, ubushinjacyaha (Leta) bwifashisha abahanga. Abahanga bagerageza kugaragaza ko hamwe n'uko habonetse ibiyobyabwenge ariko hari ibimenyetso by'ubucuruzi bwabyo.

[20] Bakomeza bavuga ko uburyo bwo kugaragaza ibyo bimenyetso bukunze kwitwa indicia of sale (ibigaragaza ubucuruzi). Bimwe muri ibyo bimenyetso ni: iminzani, amasashe yifashishwa mu gupfunyikamo, amafaranga asanzwe aho, ahagaragara nk'ububiko, ubwinshi kw'ikiyobyabwenge bahasanze, urujya n'uruza rw'abantu ahongaho, abatangabuhamya bemeza ubucuruzi bw'ibiyobyabwenge. Bakomeza bavuga ko mu manza z'ibiyobyabwenge, iyo ubushinjacyaha (Leta) budashoboye kwerekana ko uregwa atarafite gusa ibiyobyabwenge ahubwo yabigurishije cyangwa yateganyaga kubigurisha ahanisha igihano gito cyo gufatanwa ibiyobyabwenge.[4]

[21] Ibivuzwe n'abanyamategeko bavuzwe haruguru, byunvikanisha ko ku bijyanye n'icyaha cy'ubucuruzi bw'ibiyobyabwenge bimwe mu byashingirwaho mu kubugaragaza ari uko hamwe no gufatanwa ibiyobyabwenge hari n'ibindi bimenyetso by'ibyabaye n'ubuhamya bigaragaza ibyubwo by'ubucuruzi.

[22] Nk'uko bigaragazwa n'inyandiko ikubiyemo ikirego (acte d'accusation) iri muri dosiye y'uru rubanza, mu Rukiko Rwisumbuye rwa Rubavu, Butera Gedeon yarezwe icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge n'urusobe rw'imiti ikoreshwa nkabyo mu buryo butemewe n'amategeko, giteganywa kandi kigahanishwa ingingo ya 263 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, hashingiwe ku bikorwa yakoze byo kuba ku wa 23/01/2020 yarafatanywe ibiyobyabwenge byo mu bwoko bw'Urumogi udupfunyika makumyabiri na tubiri (22) aruvanye i Goma ho mu gihugu cya Repubulika Iharanira Demokarasi ya Congo (RDC) arujyanye i Musanze, afatirwa ku mupaka ari kurwambutsa.[5]

[23] Butera Gedeon aburana ku rwego rwa mbere mu Rukiko Rwisumbuye rwa Rubavu mu rubanza nº RP 00090/2020/TGI/RBV yazamuye inzitizi y'iburabusha, avuga ko urumogi yafatanywe atari urwo gutunda cyangwa kugurisha, ko ari urwo kunywa, ko rero Urukiko rw'Ibanze rwa Gisenyi arirwo rufite ububasha bwo kumuburanisha kuri icyo cyaha cyo gufatanwa no kunywa ibiyobyabwe, maze ku wa 18/03/2021 urwo Rukiko rufata icyemezo mu rubanza rubanziriza urundi, rwemeza ko ibikorwa Butera Gedeon akurikiranyweho bigize icyaha cyo gucuruza urumogi, ko rero arirwo rufite ububasha bwo kumuburanisha.

[24] Iburanisha mu mizi y'urubanza ryarakomeje, Butera Gedeon ahamwa n'icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge n'urusobe rw'imiti ikoreshwa nkabyo kigizwe n'igikorwa cyo gucuruza ikiyobyabwenge cy'urumogi, ahanishwa igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi magana atanu (20.500.000 Frw).

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4 It is important to remember that the State has the burden to prove that you were in possession of a certain drug and that you sold or intended to sell that drug. When a case lacks direct evidence of an actual drug transaction occurring, the State will often rely on expert testimony. These experts will attempt to establish that in addition to the drugs found there is other evidence or there are signs of drug trafficking. This evidence is commonly referred to as indicia of sale. Examples of indicia of sale include: Scales; Baggies, cash, ledges, large amounts of a particular drug, volume of people coming in and out of a house, witness of testimony of drug sales. In drug trafficking cases, if the State is unable to prove that you not only possessed a drug but that you sold or intended to sell that drug, then you are only guilty of a lesser offense of felony possession of drugs. Available at: https://www.feldmanroyle.com/drug-crimes/drug-trafficking/, visited on 20/06/2022.

5 Reba inyandiko ikubiyemo ikirego y'ubushinjacyaha yo ku wa 24/02/2022 n'iyo ku wa 13/04/2022 zose ziri muri dosiye y'uru rubanza.

[25] Imikirize y'urubanza nº RPA 00505/2021/HC/MUS rujuririrwa, igaragaza ko Butera Gedeon yajuririye Urukiko Rukuru, Urugereko rwa Musanze, anenga ko inyito y'icyaha yahamijwe idahuye n'ibikorwa yakoze, ko Urukiko rubanza rwamuhamije icyaha cyo gucuruza ibiyobyabwenge ntacyo rushingiyeho kuko urumogi yafatanywe rwari urwo kunywa, maze Urukiko Rukuru, Urugereko rwa Musanze rushingiye ku kuba Butera Gedeon yarafatanywe urumogi aruvanye muri Repubulika Iharanira Demokarasi ya Congo arwinjiza mu Rwanda no kuba iyo adafatwa yari kurukomezanya akarujyana mu Karere ka Musanze, rwemeza ko ibyo bikorwa bigize icyaha cyo gutunda ibiyobyabwenge, ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[26] Dosiye y'urubanza igaragaza ko Butera Gedeon yafatiwe ku mupaka wa petite barrière ho mu Karere ka Rubavu ari kwambutsa urumogi udupfunyika makumyabiri na tubiri (22) arukuye i Goma ho muri Repubulika Iharanira Demokarasi ya Congo (DRC), arujyanye mu Karere ka Musanze aho yiga mu ishuri rya INES Ruhengeri, icyakora akaba yaraburanye kuva mu nkiko zabanje kugeza mu rw'Ubujirire ahakana icyaha cyo gutunda no gucuruza ibiyobyabwenge akemera icyo kubifatanwa no kubinywa ndetse kuri uru rwego rw'ubujurire akaba yarasobanuye ko yavuye i Musanze ajya muri Congo ajyanywe no kunywa no kugura urumogi, agezeyo ararunywa agura n'urwo gutahana udupfunyika makumyabiri na tubiri (22) arufatanwa ageze ku mupaka arikurwambutsa ngo arujyane i Musanze aho yiga kugira ngo azajye arunywa.

[27] Urukiko rw'Ubujurire rurasanga Butera Gedeon aburana mu Rukiko Rukuru, Urugereko rwa Musanze yaravuze ko yari inshuro yakabiri avana urumogi muri Repubulika Iharanira Demokarasi ya Congo arujyana mu Rwanda mu Karere ka Musanze.[6]

[28] Urukiko rw'Ubujurire rurasanga uretse n'ibyo Butera Gedeon yiyemerera, hari n'abatangabuhaya babajijwe mu Bugenzacyaha bamushinja barimo Nkusi Fred alias Kadogo ariwe wamusatse akamusangana urumogi na Habarugira Jean Damascène na Nkurunziza Jean René babibonye arufatanwa, bose bemeza ko ku wa 23/01/2022 yafatanywe urumogi udupfunyika makumyabiri na tubiri (22) arikurwambutsa umupaka aruvanye muri Congo arujyanye mu Rwanda, ababwira ko yari arujyanye i Musanze (côte 5 – 10).

[29] Urukiko rw'Ubujurire rurasanga harebwe ingano y'urumogi yafatangwe (udupfunyika 22) bigaragara ko ari ruke ku buryo rukwiriye gufatwa ko rwari urwo kwinywera, rurasanga kandi nta kimenyetso cyagaragarijwe Urukiko cyemeza ko urumogi yafatanywe yaruguze i Goma muri Congo akaba yararujyanye i Musanze atari urwo kwinywera ahubwo yari agamije kurucuruza (possession of cannibis not for personal consumption but possesion with intent to sell).

[30] Uru Rukiko rurasanga ibikorwa byakozwe na Butera Gedeon bigize icyaha cyo gufatanywa no kunywa ibiyobyabwenge kuko nta gushidikanya ko yafatanywe udufunyika makumyabiri na tubiri (22) tw'urumogi nkuko byagaragajwe haruguru, bityo akaba agomba guhamywa n'icyaha cyo gufatanwa n'icyo kunywa ibiyobyabwenge by'ubwoko by'urumogi, aho kuba icyo kubicuruza cyangwa ku bitunda yahamijwe n'Inkiko zabanje.

[31] Ku bijyanye n'uko Butera Gedeon yaburanye asaba ko Urukiko rw'Ubujurire rwakohereza urubanza rwe mu Rukiko rw'Ibanze ngo aririwo ruruburanisha kuko ibyaha yemera ko yakoze aririwo rufite ububasha bwo kubiburanisha, Urukiko rw'Ubujurijurie rurasanga nubwo ibyaha Butera Gedeon yemeye ari nabyo byamuhamye biri mu bubasha bw'Urukiko rw'Ibanze, ariko nanone kuko yarangije igihano kijyanye n'ibyaha byamuhamye, ibiri mu nyungu z'ubutabera ari gufata icyemezo kimurekura, ibi akaba ari nako byagenze mu rubanza rw'Ubushinjacyaha na Musabyimana Elysée Sybillin, uyu akaba yaratangiye kuburana aburanira mu Rukiko rw'isumbuye nyuma yo guhamwa

6 Reba inyandikomvugo y'iburanisha ry'urubanza nº RPA 00 RPA 00505/2021/HC/MUS yo ku wa 13/10/2021, urupapuro rwa 3.

n'icyaha arajurira agera no muri uru Rukiko, Urukiko rw'Ubujurire ruramuburanisha rusanga ahamwa n'icyaha kiburanishwa n'Urukiko rw'Ibanze biza no kugaragarira Urukiko ko yarangije igihano rwari rwamuhaye kijyanye n'icyaha rwamuhamije, ruhita rufata icyemezo cyo kumurekura rutagombye gusubiza urubanza rwe mu Rukiko rw'ibanze.[7]

[32] Urukiko rw'Ubujurire rurasanga hashingiwe ku gika cya mbere (1) n'icya kabiri by'ingingo ya 263 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru, Butera Gedeon yaragombaga guhanishwa igifungo kitari munsi y'umwaka umwe (1), ariko kitarenze imyaka ibiri (2) cyangwa imirimo y'inyungu rusange.

[33] Urukiko rw'Ubujurire rurasanga harebwe imiterere y'icyaha Butera Gedeon yakoze agomba guhanishwa igihano cy'igifungo cy'imyaka ibiri (2), aho kuba igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga miliyoni makumyabiri n'ibihumbi magana atanu (20.500. 00 Frw).

[34] Urukiko rw'Ubujurire rurasanga kuba Butera Gedeon yarafashwe agafungwa ku wa 23/01/2020 agomba kurekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo cy'imyaka ibiri (2) yakatiwe n'uru Rukiko.

[35] Kubera impamvu zose zavuzwe haruguru, Urukiko rw'Ubujurire rurasanga ubujurire bwatanzwe na Butera Gedeon bufite ishingiro, urubanza rujuririrwa rukaba ruhindutse mu ngingo zarwo zose.

III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko ubujurire bwatanzwe na Butera Gedeon bufite ishingiro;

[37] Rwemejo ko Urubanza n˚ RPA 00505/2021/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 22/02/2022 ruhindutse mu ngingo zarwo zose;

[38] Rwemeje ko Butera Gedeon ahamwa n'icyaha cyo gufatanwa no kunywa ibiyobyabwenge by'ubwoko bw'urumogi adahamwa n'icyaha cyo gutunda ibiyobyabwenge yari yahamijwe n'Urukiko Rukuru;

[39] Ruhanishije Butera Gideon igihano cy'igifungo cy'imyaka ibiri (2) aho kuba igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi magana atanu (20.500.000 Frw) yari yarahanishijwe n'inkiko zabanje;

[40] Rutegetse ko Butera Gedeon ahita arekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo cy'imyaka ibiri (2) yakatiwe n'uru Rukiko.

[41] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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7 Reba Urubanza N˚ RPAA 000156/2012/CA haburana Ubushinjacyaha na Musabyimana Elysée Sybillin