UBUSHINJACYAHA v SHAKUBONE

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00027/2021/CA (Tugireyezu, P.J.) 15 Nyakanga 2022]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Igabanyagihano – Nta cyabuza uregwa wahanishijwe igihano atishimiye, ko mu bujurire yakongera gusaba kugabanyirizwa birushijeho mu gihe asanga igihano yahawe kiremereye harebwe icyaha yahamijwe.

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Igihano – Mu kugena igihano, Umucamanza, ntiyita gusa ku buremere bw'icyaha, ahubwo anareba imibereho y'uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akabihuza n'uko icyaha cyakozwe, uburemere bwacyo n'ingaruka cyateye muri sosiyete.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha bukurikiranye Shakubone ku cyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, buvuga ko yafatanywe udupfunyika 46 tw'urumogi iwe mu nzu aho yarubikaga. Urwo Rukiko rwasanze hari ibimenyetso bifatika byerekana ko Shakubone yakoze icyaha cyo gucuruza urumogi nuko rumuhanisha igifungo cy'imyaka 25 n'ihazabu y'amafaranga miliyoni ebyiri (2.000.000 Frw)

Shakubone yajuririye Urukiko Rukuru, anenga Urukiko Rwisumbuye ko rwamuhanishije igihano kirekire kandi yaraburanye yemera icyaha cyo kunywa urumogi aho kuba icyo kurucuruza maze Urukiko Rukuru rusanga, ibyo asaba byo kugabanyirizwa igihano nta shingiro byahabwa kuko ibyo asaba yabikorewe, rwemeza ko ubujurire bwe nta shingiro bufite.

Shakubone yarongeye ajuririra Urukiko rw'Ubujurire avuga ko noneho yemeye kuvugisha ukuri, ko yemera icyaha cyo gucuruza urumogi akanagisabira imbabazi kuko n'ubwo udupfunyika 46 yafatanywe yatunywaga nk'umuti yivura amarozi, n'uwazanaga amafaranga yamugurishaga bitewe n'udupfunyika "boules" akeneye, asaba Urukiko rw'Ubujurire kumugabanyiriza igihano rukamuhanisha igihano gihwanye n'icyaha yakoze, cyane ko yemera icyaha akagisabira imbabazi.

Ubushinjacyaha bwo bwaburanye buvuga ko ibisabwa na Shakubone byo kugabanyirizwa igihano yabihawe ku buryo buhagije kandi bukurikije amategeko ku buryo atakongera kubihabwa.

Incamake y'icyemezo: 1. Nta cyabuza uregwa wahanishijwe igihano atishimiye, ko mu bujurire yakongera gusaba kugabanyirizwa birushijeho mu gihe asanga igihano yahawe kiremereye harebwe icyaha yahamijwe.

2. Mu kugena igihano, Umucamanza, ntiyita gusa ku buremere bw'icyaha, ahubwo anareba imibereho y'uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akabihuza n'uko icyaha cyakozwe, uburemere bwacyo n'ingaruka cyateye muri sosiyete.

Urubanza ruhindutse gusa ku birebana n'igihano.

Amategeko yashingiweho:

Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49 n'iya 58, igika cya mbere.

Imanza zifashishijwe:

Ubushinjacyaha v. Rusesabagina, RPA 00060/2021/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022

Ubushinjacyaha v. Nahayo, RPAA 00406/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 22/10/2021.

Ubushinjacyaha v. Muhire, RPAA 00169/2021/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 17/06/2022.

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

Ubushinjacyaha v. Bahati, RPAA 00031/2021/CA, rwaciwe n'Urukiko rw'ubujurire ku wa 28/10/2021,

Ibitekerezo by'abahanga:

HARALD Renoult, Droit pénal général, 19e édition, Bruylant-Paradigme, Bruxelles, 2020, P. 291.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo Ubushinjacyaha bukurikiranye Shakubone Reverien ku cyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, buvuga ko yafatanwe udupfunyika 46 tw'urumogi iwe mu nzu aho yarubikaga.

[2] Shakubone Reverien yaburanye yemera icyaha aregwa, anemera ko yafatanywe udupfunyika 46 tw'urumogi.

[3] Mu rubanza RP 00985/2019/TGI/GSBO rwaciwe ku wa 30/04/2019, Urukiko Rwisumbuye rwa Gasabo rwasanze hari ibimenyetso bifatika byerekana ko Shakubone Reverien yakoze icyaha cyo gucuruza urumogi birimo kuba abazwa mu Bugenzacyaha no mu Bushinjacyaha yaremeye ko yafatatanywe udupfunyika 46, yagera n'imbere y'Urukiko agakomeza kubyemera, hakaba n'abatangabuhamya bamushinja ko yari asanzwe acuruza urumogi, rumuhanisha igifungo cy'imyaka 25 n'ihazabu y'amafaranga miliyoni ebyiri (2.000.000 Frw).

[4] Shakubone Reverien yajuririye Urukiko Rukuru, anenga Urukiko Rwisumbuye rwa Gasabo ko rwamuhanishije igihano kirekire kandi yaraburanye yemera icyaha cyo kunywa urumogi aho kuba icyo kurucuruza.

[5] Mu rubanza nº RPA 00962/2019/HC/KIG rwaciwe ku wa 30/06/2020, Urukiko Rukuru, rwasanze, hashingiwe ku ngingo ya 60 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ibyo Shakubone Reverien asaba byo kugabanyirizwa igihano nta

shingiro byahabwa kuko ibyo asaba yabikorewe, rwemeza ko ubujurire bwa SHAKUBONE Reverien nta shingiro bufite, ko atagabanyirizwa ibihano, rutegeka ko imikirize y'urubanza nº RP 00985/2019/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 30/04/2019 idahindutse.

[6] Shakubone Reverien ntiyishimiye imikirize y'urubanza ajuririra Urukiko rw'Ubujurire avuga ko noneho yemeye kuvugisha ukuri, ko yemera icyaha cyo gucuruza urumogi akanagisabira imbabazi kuko n'ubwo udupfunyika 46 yafatanywe yatunywaga nk'umuti yivura amarozi n'uwazanaga amafaranga yamugurishaga bitewe n'udupfunyika "boules" akeneye, asaba Urukiko rw'Ubujurire kumugabanyiriza igihano rukamuhanisha igihano gihwanye n'icyaha yakoze, cyane ko yemera icyaha akagisabira imbabazi. Ubujurire bwe bwarakiriwe buhabwa nº RPAA 00027/2021/CA.

[7] Urubanza rwaburanishijwe ku wa 02/06/2022, Urukiko ruhamagaye urubanza rusanga ababuranyi bose bitabye, SHAKUBONE Reverien yunganiwe na Me Ndayisabye Alexis, naho Ubushinjacyaha buhagarariwe na RUBERWA Bonaventure, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

- **Kumenya niba Shakubone Reverien yakongera kugabanyirizwa igihano**

A. Imiburanire ya Shakubone Reverien

[8] Shakubone Reverien avuga ko yaburanye yemera icyaha akanagisabira imbabazi ariko urukiko Rukuru rumuhanisha igihano cy'igifungo cy'imyaka 25 nyamara Ubushinjacyaha bwari bwamusabiye igifungo cy'imyaka 7 ndetse ko hari urubanza n° RP 00096/2019/TGI/GSBO rwaciwe ku wa 28/06/2019 Ubushinjacyaha bwaregagamo Ntezimana Jean Bosco aho urukiko rwamuhamije icyaha cyo gucuruza urumogi, rumuhanisha igifungo cy'imyaka 3 n'ihazabu ya 5.000.000 Frw asaba rero ko nawe yahanishwa igihano gihwanye n'icya Ntezimana Jean Bosco kuko icyaha bahamijwe ndetse n'igihano basabirwaga n'Ubushinjacyaha ari bimwe, asaba Urukiko rw'Ubujurire guca inkoni izamba rukongera kumugabanyiriza igihano kuko yamaze kubona ububi bw'icyaha akaba atazongera gucuruza ibiyobyabwenge.

[9] Me Ndayisabye Alex, avuga ko kuba Shakubone Reverien yemera icyaha ku buryo budashidikanywaho akanasobanura uko yagikoze bitandukanye n'uko yacyemeye mu Rukiko Rukuru, bikwiriye gushingirwaho akagabanyirizwa igihano kuko mbere atahawe ubutabera buboneye, hagashingirwa ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza n° RS/INCOSNT/SPEC rwaciwe ku wa 04/12/2019, no ku rubanza n° RPAA 00031/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/10/2021 haburana Ubushinjacyaha na Bahati Françoise, aho rwamuhanishije igifugo cy'imyaka 10 ruvuye ku gihano cy'imyaka 25 yari yahanishijwe n'Urukiko rubanza, ariko ko iyi myaka icumi nayo byemewe kuyijya munsi nk'uko byakozwe mu rubanza n° RP 00353/2021/TGI/NYGE, rwaciwe ku wa 25/06/2021 hagati y'Ubushinjacyaha, Habarurema, Nizeyimana Jean Claude, Uwase Nicole, Ntawigena Jean Baptiste, umucamanza mu kugabanya akaba yarashingiye ku mirongo yatanzwe yavuzwe hejuru,

nawe mu gutanga ubutabera buboneye abahanisha igifungo cy'imyaka 6 ku cyaha cyo kubika no gucuruza ibiyoyabwenge by'urumogi, asaba ko icyemezo cyafashwe n'Urukiko Rukuru cyahinduka, Urukiko rw'Ubujurire rugategeka ko Shakubone Reverien ahanishwa igihano cy'igifungo cy'imyaka 5 n'ihazabu ya 1.000.000Frw.

B. Imiburanire y'Ubushinjacyaha

[10] Uhagarariye Ubushinjacyaha avuga ko ubujurire ya Shakubone Reverien nta shingiro bufite kuko hashingiwe ku ngingo ya 60 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange no ku ngingo ya mbere y'Itegeko no 69/2019 ryo kuwa 08/11/2019 rihindura no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ibisabwa na Shakubone Reverien byo kugabanyirizwa igihano yabihawe ku buryo buhagije kandi bukurikije amategeko ku buryo atakongera kubihabwa.

[11] Akomeza asobanura ko ibivugwa n'uwunganira Shakubone Reverien ko hari umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza n° RS/INCONST/SPEC 00003/2019/SC ku wa 04/12/2019, uwo murongo ukaba utashingirwaho kuko watanzwe gusa ku birebana n'ingingo ya 133, igika cya gatanu y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange kuko ingingo ya 60 itaregewe cyangwa ngo ikurweho. Anavuga ko urubanza n° RPAA 00031/2021/CA, rwa Bahati Françoise n'Ubushinjacyaha narwo rutashingirwaho kuko nta murongo rutanga kandi rukaba runyuranya n'ibiteganyijwe n'amategeko, bityo asaba Urukiko rw'Ubujurire kwemeza ko ubujurire bwa Shakubone Reverien nta shingiro bufite, hakagumaho imikirize y'urubanza rwajuririwe.

UKO URUKIKO RUBIBONA

[12] Hakurikijwe imiburanire y'uregwa n'iy'Ubushinjacyaha, impaka ziri muri uru rubanza zigamije kumenya niba Shakubone Reverien yaragabanyirijwe igihano bihagije mu nkiko zibanza ku buryo atakongera kugabanyirizwa.

[13] Ku birebana n'icyo umucamanza ashingiraho mu kugena igihano, ingingo ya 49 y'Itegeko n˚ 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko "Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo''.

[14] Ku birebana no kwemeza ko impamvu nyoroshyacyaha zahabwa ishingiro, ingingo ya 58, igika cya mbere, y'Itegeko n˚ 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru iteganya ko: "Umucamanza ubwe ni we ugena niba impamvu nyoroshyacyaha zemezwa n'umucamanza zahabwa agaciro''.

[15] Ibirebana no kuba umucamanza atanga igihano kijyanye n'uburemere bw'icyaha, uru rukiko rwabisesenguye mu rubanza n° RPA 00060/2021/CA, aho rwasobanuye ko ingingo za 49 n'iya 58 z'Itegeko n˚ 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru zumvikanisha ko Umucamanza mu bushishozi bwe asuzuma impamvu nyoroshyacyaha (circonstances atténuantes judiciaires ou causes judiciaires d'atténuation), akazisobanura, akemeza ko koko zoroshya uburemere bw'icyaha kandi ko zikwiye gushingirwaho. Iyo amaze kwemeza ko zashingirwaho

atanga igihano kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Ubwo burenganzira bufitwe na buri mucamanza usuzuma urubanza yashyikirijwe harimo n'Umucamanza uburanisha urubanza rujuririrwa[1].

[16] Abahanga mu mategeko nabo bateganya ko mu gutanga igihano, Umucamanza areba imibereho y'uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akabihuza n'uko icyaha cyakozwe, uburemere bwacyo n'ingaruka cyateye muri sosiyete, bivuze ko atanga igihano akigereranyije n'icyaha cyakozwe (principe de la proportionnalité de la peine à l'infraction), ibyo akabikora agamije kurengera sosiyete, guhana koko uwakatiwe, kurengera inyungu z'uwahohotewe, anabihuza n'inyungu yo gusubiza mu buzima busanzwe uwakatiwe no gukumira ibyaha bishya[2].

[17] Ibirebana no kuba uregwa utarishimiye igihano kiremereye yahawe yakongera gusaba kongera kugabanyirizwa igihano, byasesenguwe mu manza zitandukanye zaciwe n'Urukiko rw'Ubujurire harimo urubanza nº RPAA 00406/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/10/2021, aho urwo Rukiko rwasanze nta cyabuza uregwa wahanishije igihano atishimiye, ko mu bujurire yakongera gusaba kugabanyirizwa birushijeho mu gihe asanga igihano yahawe kiremereye harebwe icyaha yahamijwe, maze mu bushishozi bw'Urukiko rwajuririwe rugasuzuma niba ibyo asaba bikwiye kandi bikurikije amategeko[3].

[18] Dosiye y'urubanza igaragaza inyandikomvugo y'ibazwa rya Shakubone Reverien mu Bugenzacyaha ku wa 20/11/2018 aho yemeye icyaha cyo kunywa urumogi ariko ahakana icyaha cyo kurucuruza, ko ibiyobyabwenge byo mu bwoko bw'urumogi udupfunyika (boules) 46 yafatanywe yazikoreshaga mu rwego rwo kwivura amarozi, akaba yaraguze udupfunyika 46 kuko yagombaga kurunywa mu gihe cy'amezi 6, maze asoza asaba imbabazi z'icyaha cyo kunywa urumogi.

[19] Dosiye y'urubanza igaragaza kandi inyandikomvugo y'ibazwa rya Shakubone Reverien mu Bushinjacyaha ku wa 23/11/2018 aho yongeye kwemera icyaha cyo kunywa urumogi ariko ahakana icyaha cyo kurucuruza aho yasobanuye ko yatangiye kunywa urumogi guhera 2014, ko ari inshuro ya kabiri akurikiranyweho ibiyobyabwenge, kuko 2015 yari yarakatiwe imyaka ibiri n'amezi ane, asaba imbabazi z'icyaha cyo kunywa urumogi ndetse ko atazongera kurunywa nk'umuti.

[20] Mu rubanza nº RP 00985/019/TGI/GSBO rwaciwe ku wa 30/04/2019, Urukiko Rwisumbuye rwa Gasabo rwasanze Shakubone Reverien ahamwa n'icyaha cyo gucuruza urumogi

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[1] Reba urubanza N° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa haburana Ubushinjacyaha na RUSESABAGINA Paul na bagenzi be, urupapuro rwa 88, igika cya 252.

[2] HARALD Renoult, Droit pénal général, 19e édition, Bruylant-Paradigme, Bruxelles, 2020, P. 291: '' Le choix de la peine par le juge doit donc obéir à cinq considérations: la protection de la société, la punition du condamné, la prise en compte des intérêts de la victime, la réinsertion du condamné et la lutte contre la récidive.''

[3] Reba urubanza nº RPAA 00406/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/10/2021, haburana Ubushinjacyaha na NAHAYO Ignace, igika cya 22, urubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022, haburana Ubushinjacyaha na RUSESABAGINA Paul, urupapuro rwa 88, igika cya 254

maze rushingiye ku kuba ubwe yaremereye muri urwo Rukiko[4] ibyo aregwa byo gucuruza urumogi, rushingiye ku kuba aburana yemera icyaha bituma agabanyirizwa ibihano, bityo ruvuga ko ahanishijwe igifungo cy'imyaka makumyabiri n'itanu n'ihazabu ya miliyoni ebyiri (2.000.000 Frw).

[21] Mu rubanza no RPA 00962/2019/HC/KIG rwaciwe ku wa 30/6/2020, Urukiko Rukuru, rwasanze Shakubone Reverien hashingiwe ku biteganywa n'ingingo ya 60 y'iryo tegeko n° 68/2018 iteganya ko iyo hari impamvu nyoroshyacyaha, ibihano bishobora kugabanywa ariko igihano cyo gufungwa burundu gishobora kugabanywa ariko ntikijye munsi y'imyaka makumyabiri n'itanu (25), ko yagabanyirijwe ahanishwa igifungo cy'imyaka makumyabiri n'itanu (25 ans) kandi yaragombaga guhanishwa burundu, rwemeza ko atakongera kugabanyirizwa.

[22] Urukiko rw'Ubujurire rurasanga Shakubone Reverien asaba kongera kugabanyirizwa igihano kuko icyo yahawe kiremereye ariko Ubushinjacyaha bwo bukavuga ko impamvu y'ubujurire ya Shakubone Reverien igamije gusaba kongera kugabanyirizwa igihano idakwiye guhabwa ishingiro kuko ibyo asaba yabihawe, nyamara Urukiko rw'Ubujurire rukaba rusanga nk'uko byasobanuwe haruguru, nta cyabuza uregwa wahanishije igihano atishimiye, ko mu bujurire yakongera gusaba kugabanyirizwa birushijeho mu gihe asanga igihano yahawe kiremereye harebwe icyaha yahamijwe, maze mu bushishozi bw'Urukiko rwajuririwe rugasuzuma niba ibyo asaba bikwiye kandi bikurikije amategeko[5].

[23] Ku birebana n'imvugo y'Ubushinjacyaha ko kuba Shakubone Reverien asaba kongera kugabanyirizwa igihano bidakwiye guhabwa ishingiro kuko yagabanyirijwe bihagije mu gihe yahawe igihano gito giteganyijwe n'itegeko, Urukiko rw'Ubujurire rurasanga iyo miburanire nta shingiro ikwiye guhabwa kuko nk'uko byasobanuwe n'uru rukiko mu rubanza nº RPAA 00169/2021/CA rwaciwe ku wa 17/06/2022 haburana Ubushinjacyaha na Muhire[6] , kumenya niba Urukiko rubanza rwaragabanyije uregwa igihano ku buryo buhagije ari inshingano zifitwe n'Urukiko rwajuririwe nyuma yo gusuzuma impamvu nyoroshyacyaha zaba ari izirebana n'uregwa cyangwa izirebana n'icyaha, rukemeza ko hatanzwe igihano gikwiye hakurikijwe uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo nk'uko biteganywa n'ingingo ya 49 y'Itegeko n˚ 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange hamwe n'abahanga mu mategeko byavuzwe haruguru.

[24] Ku birebana n'imvugo y'Ubushinjacyaha ko umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza n° RS/INCONST/SPEC 00003/2019/SC ku wa 04/12/2019 utashingirwaho kuko watanzwe gusa ku birebana n'ingingo ya 133, igika cya gatanu y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, Urukiko rw'Ubujurire rurasanga nta shingiro byahabwa kuko n'ubwo ikiregerwa mu rubanza N° RS/INCONST/SPEC 00003/2019/SC cyari

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[4] Inyandikomvugo y'iburanisha mu Rukiko Rwisumbuye rwa Gasabo yo ku wa 09/04/2019, igaragaza ko Shakubone Reverien yemeye ibyo Ubushinjacyaha byamuregaga byose

[5] Reba urubanza nº RPAA 00406/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/10/2021, haburana Ubushinjacyaha na NAHAYO Ignace, igika cya 22, urubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022, haburana Ubushinjacyaha na RUSESABAGINA Paul, urupapuro rwa 88, igika cya 254.

[6] Reba urubanza nº RPAA 00169/2021/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 17/06/2022 haburana Ubushinjacyaha na MUHIRE, igika cya 23.

ukwemeza ko ingingo ya 133 y'itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo zaryo za 29 na 151, muri urwo rubanza mu gika cya 41 rwagaragaje ko mu gihe cyo gusuzuma iki kirego rwasanze hari n'ikindi kibazo mu itangwa ry'ibihano muri rusange kijyanye n'intera iri hagati y'igihano gito (minimum) n'ikinini (maximum) rukaba rukwiye kugira icyo rukivugaho kuko kiri mu murongo umwe n'ikibazo rwaregewe ndetse guhera mu gika cya 40 kugeza ku gika cya 48 rusuzuma ingingo ya 60 maze ruvuga ko umucamanza agomba guhabwa ubwisanzure bwo gutanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo kuko bituma uwahamwe n'icyaha hari n'impamvu nyoroshyacyaha, atagabanyirizwa igihano ku buryo bukwiye, ndetse rimwe na rimwe akaba yahanwa hafi kimwe y'uwakoze icyaha hatari impamvu nyoroshyacyaha[7].

[25] Ku birebana n'imvugo y'Ubushinjacyaha ko urubanza n° RPAA 00031/2021/CA, rwa BAHATI Françoise n'Ubushinjacyaha narwo rutashingirwaho kuko nta murongo rutanga kandi rukaba runyuranya n'ibiteganyijwe n'amategeko, Urukiko rw'Ubujurire rurasanga nta shingiro byahabwa kuko mu rubanza n° RPAA 00031/2021/CA, rwaciwe ku wa 28/10/2021, mu gika cyarwo cya 43, rwemeje ko ibiteganywa n'ingingo ya 60, agace ka mbere (1), y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru, bibuza Umucamanza kugabanya igihano cyo gufungwa burundu munsi y'igihano cy'igifungo cy'imyaka makumabyiri n'itanu (25) mu gihe hari impamvu nyoroshyacyaha, bidakwiye gukoreshwa kuko binyuranye n'amahame y'ubutabera buboneye, ubwisanzure n'ubwigenge bw'Umucamanza[8]. Bikaba rero bigaragara ko rwatanze umurongo werekana ko umucamanza akwiye kugabanya igihano ashingiye ku mpamvu nyoroshyacyaha akaba ndetse yajya no munsi y'igihano gito giteganywa mu ngingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru hagamijwe gutanga ubutabera buboneye.

[26] Urukiko rw'Ubujurire rurasanga kandi kuba uhagarariye Ubushinjacyaha avuga ko urubanza n° RPAA 00031/2021/CA runyuranye n'amategeko nta shingiro byahabwa kuko nta bimenyetso abigaragarisha ndetse kugeza ubu akaba nta rundi rubanza rwarukuyeho kandi hakaba nta muburanyi wigeze aruregera ngo urukiko rubifitiye ububasha rube rwaremeje ko runyuranyije n'amategeko.

[27] Urukiko rw'Ubujurire rurasanga nk'uko byasobanuwe haruguru n'ubwo Shakubone Reverien yagabanyirijwe hashingiwe ku kwemera icyaha, ariko akajurira avuga ko atagabanyirijwe mu buryo buhagije hakurikijwe icyaha yakoze, nta cyabuza uru Rukiko gusuzuma ishingiro ry'ibyo asaba byo kongera kumugabanyirizwa igihano mu gihe rusanga igihano cyatanzwe n'urukiko rubanza kitaragabanyijwe mu buryo buhagije ubirebeye hamwe n'uburemere bw'icyaha cyakozwe nk'uko byasobanuwe haruguru.

[28] Urukiko rw'Ubujurire rurasanga Urukiko Rukuru rwarahamije Shakubone Reverien icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi biri mu biyobyabwenge bihambaye, icyaha gihanishwa igihano cy'igifungo cya burundu gishobora kugabanywa ariko ntikijye munsi

[7] Reba urubanza n° RS/INCONST/SPEC 00003/2019/SC haburana Florida Kabasinga rwaciwe n'Urukiko rw'Ikirenga ku wa 4/12/2019, igika cya 44 cy'urwo rubanza.
[8]Reba urubanza n° RPAA 00031/2021/CA, rwaciwe ku wa 28/10/2021 haburana Ubushinjacyaha na Bahati Françoise, rwaciwe n'Urukiko rw'ubujurire ku wa 28/10/2021, igika cya 43.

y’imyaka makumyabiri n’itanu (25), ariko we akaba yaragabanyirijwe ahanishwa igihano cy’igifungo cy’imyaka 25 n’ihazabu ya miliyoni ebyiri (2.000.000 Frw) rushingiye ku kuba yaraburanye yemera icyaha, rukaba rusanga igihano cy’igifungo cy’imayaka 25 n’ihazabu ya miliyoni ebyiri (2.000.000 Frw) yahawe kitagabanyijje ku buryo buhagije ugereranije n’uburemere bw’icyaha yakoze.

[29] Urukiko rw’Ubujurire rurasanga rero kuba Shakubone Reverien ataragabanyirijwe mu buryo buhagajie, ku bw’ibyo akwiye kongera kugabanyirizwa igihano, agahanishwa igifungo cy’imyaka cumi n’irindwi (17) n’ihazabu ya miliyoni ebyiri (2.000.000 Frw), aho kuba igifungo cy’imyaka makumyabiri n’itanu (25 ans) n’ihazabu ya miliyoni ebyiri (2.000.000 Frw) yari yahanishijwe mbere.

[30] Urukiko rw’Ubujurire rurasanga ariko kuba Shakubone Reverien n’umwunganira basaba ko yagabanyirizwa kugeza ku gihano cy’igifungo cy’imyaka 10 ndetse no ku myaka 5 n’ihazabu ya 1.000.000 Frw hashingiwe ku rubanza n° RS/INCOSNT/SPEC 00003/2019/CS rwaciwe ku wa 04/12/2019 no ku rubanza n° RPAA 00031/2021/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 28/10/2021 haburana Ubushinjacyaha na Bahati Françoise, aho muri uru rubanza, uregwa yahanishijwe igifungo cy’imyaka 10 ruvuye ku gihano cy’imyaka 25 n’ihazabu ya 21.000.000 Frw yari yahanishijwe n’Urukiko rubanza ndetse ko iyi myaka icumi nayo byemewe kuyijya munsi nk’uko byakozwe mu rubanza n° RP 00353/2021/TGI/NYGE, rwaciwe ku wa 25/06/2021 hagati y’Ubushinjacyaha, Habarurema na bagenzi be, nta shingiro bifite kuko nk’uko byasobanuwe haruguru mu kugena igihano atanga, Umucamanza, atita gusa ku buremere bw’icyaha, ahubwo anareba imibereho y’uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akabihuza n’uko icyaha cyakozwe, uburemere bwacyo n’ingaruka cyateye muri sosiyete, ndetse ibyo bikaba bigomba guhuzwa no kurengera sosiyete, guhana koko uwakatiwe, kurengera inyungu z’uwahohotewe, anabihuza n’inyungu yo gusubiza mu buzima busanzwe uwakatiwe no gukumira ibyaha bishya, bityo rero kuba mu manza zivugwa muri iki gika, igihano cyaravuye ku myaka 25 kikagera ku myaka 10 cyangwa bikajya munsi yayo bitaba ihame ko buri wese ugabanyirijwe ahabwa icyo gihano cy’imyaka 10 cyangwa imyaka itanu nk’uko Shakubone Reverien abisaba.

[31] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rw’Ubujurire rurasanga ubujurire bwa Shakubone Reverien bugamije gusaba kongera kugabanyirizwa igihano bufite ishingiro, akaba agabanyirijwe igihano, agahanishwa igifungo cy’imyaka cumi n’irindwi (17) n’ihazabu ya miliyoni ebyiri (2.000.000), bityo urubanza rujuririrwa rukaba ruhindutse gusa ku birebana n’igihano yari yahanishijwe mbere.

III. ICYEMEZO CY’URUKIKO

[32] Rwemeje ko ubujurire bwa Shakubone Reverien bufite shingiro;

[33] Rwemeje ko imikirize y’urubanza n˚ RPA 00962/2019/HC/KIG rwaciwe n’Urukiko Rukuru ku wa 30/06/2020 ihindutse gusa ku birebana n’igihano Shakubone Reverien yari yahanishijwe;

[34] Ruhanishije Shakubone Reverien igihano cy’igifungo cy’imyaka cumi n’irindwi (17) n’ihazabu ya miliyoni ebyiri (2.000.000 Frw);

[35] Rutegetse ko Shakubone Reverien asonewe gutanga amagarama y'urubanza kubera ko aburana afunze.