UBUSHINJACYAHA v. DUKUZUMUREMYI

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00333/2021/CA (Gakwaya, P.J.) 19 Nzeli 2022]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Inyito y'icyaha – Inyito y'icyaha ishobora guhinduka igihe cyose Urukiko rutarafata icyemezo ndakuka.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Dukuzumuremyi icyaha cy'ubwicanyi yakoreye nyina umubyara, busobanura ko byamenyekanye ubwo ku wa 12/10/2019 umurambo w'uwo mubyeyi wabonekaga mu nzu yari atuyemo, ufite igikomere gishyashya ku musaya w'ibumoso, maze iperereza riratangira hakurikiranwa Dukuzumuremyi. Urwo Rukiko rwaciye urubanza rwemeza ko icyaha kimuhama ari icyo gukubita no gukomeretsa byateye urupfu, aho kuba icyaha cy'ubwicanyi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni zirindwi (7.000.000 Frw).

Uregwa ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko Rwisumbuye rwa Rubavu rwamuhanishije igihano kirekire, kandi yaraburanye yemera icyaha, asaba kugabanyirizwa igihano. Urwo Rukiko rwaciye urubanza rwemeza ko imikirize y'urubanza yajuririye idahindutse.

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire, avuga ko asaba kugabanyirizwa igihano kuko icyo yahawe cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni zirindwi (7.000.000 Frw) ari kinini, kandi yaraburanye yemera icyaha kuva mu ntangiriro, n'ubu akaba akomeje kucyemera no kugisabira imbabazi.

Ubushinjacyaha bwo bwaburanye buvuga ko busaba Urukiko rw'Ubujurire gusuzuma inyito y'icyaha Dukuzumuremyi yakoze, ko nk'uko byumvikana yateye nyina ibuye mu musaya (mu kico), ko ibyo bigaragaza ko yari agamije kumwica, ko rero urebye imikorere y'icyaha akwiye guhamwa n'ubwicanyi, aho kuba gukubita no gukomeretsa byateye urupfu, cyakora ko ku bijyanye n'igihano, yagumishwa kucyo yari yahawe mbere.

Incamake y'icyemezo: 1. Inyito y'icyaha ishobora guhinduka igihe cyose Urukiko rutarafata icyemezo ndakuka, bityo icyaha gikwiye guhama Dukuzumuremyi ni ubwicanyi, aho kuba gukubita cyangwa gukomeretsa byateye urupfu, kuko yakubise nyina mu cyico akoresheje inkintu gishobora kwica.

Ubujurire nta shingiro bufite.

Amategeko yakoreshejwe:

Itegeko Nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 49 n'iya 58.

Nta manza zifashishijwe.

Ibitekerezo by'abahanga:

Général LIKULIA BOLONGO, Droit pénal spécial zaïrois, Tome I, 2e édition, L.G.D.J., Paris, 1985, P.20.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Dukuzumuremyi icyaha cy'ubwicanyi yakoreye nyina umubyara Nyirabirayi Asinathe, ku wa 11/10/2019, busobanura ko byamenyekanye ubwo ku wa 12/10/2019 umurambo w'uwo mubyeyi wabonekaga mu nzu yari atuyemo, ufite igikomere gishyashya ku musaya w'ibumoso, maze iperereza riratangira hafatwa Dukuzumuremyi, wakekwagaho kuba yaramwishe akoresheje inkoni n'amabuye.

[2] Dukuzumuremyi yaburanye avuga ko yemera icyaha, asobanura ko yateye nyina ibuye mu bitugu, ariko ko icyamwishe ari amahwa yanyuzemo akamukomeretsa mu musaya, hamwe n'inkoni yakubiswe n'uwitwa Kirundo Jean Bosco.

[3] Mu rubanza no RP 00619/2019/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 31/10/2019, rwasuzumye ibikorwa bigize icyaha Dukuzumuremyi yari akurikiranyweho, rushingira kubyo Ubushinjacyaha bwarugaragarije bigizwe no kuba yarakubise nyina inkoni n'amabuye abiri, akaza gupfa bukeye, kuba nta kigaragaza ko amukubita yapimye mu kico, ngo bigaragare ko yari agambiriye kumwica, kuba nta raporo ya muganga yakozwe yerekana uburyo yakubiswemo no ku myiregurire ya Dukuzumuremyi uvuga ko yakubise nyina ibuye mu bitugu, rwemeza ko icyaha kimuhama ari icyo gukubita no gukomeretsa byateye urupfu, aho kuba icyaha cy'ubwicanyi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni zirindwi (7.000.000 Frw).

[4] Dukuzumuremyi ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko Rwisumbuye rwa Rubavu rwamuhanishije igihano kirekire, kandi yaraburanye yemera icyaha, asaba kugabanyirizwa igihano.

[5] Mu rubanza no RPA 00616/2019/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 21/9/2020, rwemeje ko ubujurire bwa Dukuzumuremyi nta shingiro bufite, rwemeza ko imikirize y'urubanza yajuririye idahindutse.

[6] Dukuzumuremyi ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire ku wa 14/10/2020, avuga ko asaba kugabanyirizwa igihano kuko icyo yahawe cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni zirindwi (7.000.000 Frw) ari kinini, kandi yaraburanye yemera icyaha kuva mu ntangiriro, n'ubu akaba akomeje kucyemera no kugisabira imbabazi.

[7] Urubanza rwaburanishijwe ku wa 6/9/2022, Dukuzumuremyi yunganirwa na Me Umugwaneza Diane, Ubushinjacyaha buhagarariwe na Ninahazwa Roselyne, Umushinjacyaha ku rwego rw'Igihugu.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

- **Kumenya niba ibikorwa Dukuzumuremyi aregwa bigize icyaha cy'ubwicanyi cyangwa icyaha cyo gukubita no gukomeretsa byateye urupfu**

[8] Ubushinjacyaha buvuga ko busaba Urukiko rw'Ubujurire gusuzuma inyito y'icyaha Dukuzumuremyi yakoze, ko nk'uko byumvikana yateye Nyirabirayi Asinathe (nyina) ibuye mu musaya (mu kico), ko ibyo bigaragaza ko yari agamije kumwica, ko rero urebye imikorere y'icyaha akwiye guhamwa n'ubwicanyi, aho kuba gukubita no gukomeretsa byateye urupfu, cyakora ko ku bijyanye n'igihano, yagumishwa kucyo yari yahawe. Bukomeza buvuga ko ibijyanye no guhindura inyito y'icyaha bubisaba bushingiye ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza n° RPAA 0110/10/SC rwaciwe ku wa 31/1/2014 haburana Ubushinjacyaha na Uwamurengeye.

[9] Me Umugwaneza Diane, wunganira Dukuzumuremyi, avuga ko ku bijyanye n'inyito y'icyaha yari yagaragaje mu mwanzuro asaba ko yahinduka, batakibikomeje, ko hashingirwa ku bikubiye mu mwanzuro yakoze amwunganira, naho ku bijyanye n'ibivugwa n'Ubushinjacyaha ko yahamwa n'ubwicanyi aho kuba gukubita no gukomeretsa byateye urupfu, nta shingiro bikwiye guhabwa kuko atari bwo bwajuriye.

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[10] Ihame ry'amategeko nshinjabyaha ryemeza ko Inkiko ziburanisha ibikorwa bigize icyaha, zitaburanisha inyito y'icyaha yemejwe n'Ubushinjacyaha cyangwa n'Inkiko zabanje, ibi bivuze ko Inkiko zifite inshingano yo guha ibikorwa bigize icyaha inyito ikwiye iteganya n'amategeko, bisobanura na none ko inyito y'icyaha ishobora guhinduka igihe cyose Urukiko rutarafata icyemezo ndakuka[1].

[11] Dosiye y'urubanza igaragaza ko Urukiko Rwisumbuye rwa Rubavu, rwaciye urubanza ku rwego rwa mbere, rwasuzumye ibijyanye n'inyito y'icyaha, aho Ubushinjacyaha mu ntangiriro bwari bukurikiranyeho Dukuzumuremyi icyaha cy'ubwicanyi, maze mu gace ka cyenda (9) n'aka cumi (10) tw'urubanza, rwemeza ko Dukuzumuremyi yateye umubyeyi we ibuye nijoro hatabona, rusobanura ko nta kirugaragariza ko yapimye mu kico, ko kandi Nyirabirayi Asinathe atahise apfa ako kanya, ko ndetse nta na raporo ya muganga yakozwe ngo itange ibisobanuro birenzeho ku buryo yakubiswemo, rwanzura ko Dukuzumuremyi agomba gukurikiranwaho icyaha cyo gukubita no gukomeretsa byateye urupfu.

[12] Dosiye y'urubanza igaragaza ko Dukuzumuremyi yabajijwe mu Bugenzacyaha ku wa 11/10/2019, avuga ko atariwe wakubise nyina wenyine, ko yafatanyije na Kirundo Jean Bosco,

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[1] ''Aussi longtemps que la décision judiciaire n'est pas encore devenue irrévocable, toute qualification est susceptible de modification. En effet, le parquet n'est pas lié par la qualification retenue par l'officier de police judiciaire ou par la partie lésée dans sa plainte. De même la juridiction de jugement étant saisie de faits, elle peut souverainement modifier la qualification qui lui est proposée par l'officier du ministère public ou par la partie civile en cas de citation directe'', Général LIKULIA BOLONGO, Droit pénal spécial zaïrois, Tome I, 2e édition, L.G.D.J., Paris, 1985, P.20. '' Le juge d'appel et le (……) procèdent également de la même manière. Car ni l'un ni l'autre n'est lié par la qualification du premier juge. Ils doivent à leur tour examiner l'exactitude de la première qualification'', Général LIKULIA BOLONGO, op.cit., P.21.

wamukubise inkoni, ko ariko nawe yateye nyina ibuye mu bitugu no ku matako, akaza gupfa nyuma.

[13] Dosiye na none igaragaza inyandiko-mvugo y'ibyabonywe n'Ubugenzacyaha ku wa 12/10/2019 igaragaza ko basanze umurambo wa Nyirabirayi Asinathe, nyina wa Dukuzumuremyi, mu nzu uramye hasi, ufite igikomere ku musaya w'ibumoso hafi ya nyiramivumbi, ko icyo gikomere bigaragara ko ari gishya, kuko basanze kivirirana amaraso.

[14] Mu mwanzuro w'ubujurire bwa Dukuzumuremyi no mu gihe cy'iburanisha muri uru Rukiko, yavuze ko yemera icyaha aregwa, ko yakubise nyina ibuye mu mutwe, rikamukomeretsa, ariko ko atahise apfa, ko ahubwo yaje gupfa hashize iminsi itatu.

[15] Urukiko rw'Ubujurire rurasanga Dukuzumuremyi buri nshuro yabajijwe yaragiye avuga ahantu hatandukanye yateye ibuye, aho nko mu Bugenzacyaha yemeye ko yarimuteye mu bitugu no ku matako, muri uru Rukiko yemera ko yarimuteye mu mutwe, ibi byumvikanisha ko n'ubwo icyaha cyakozwe ari nijoro, yakubise nyina inkoni akanamutera ibuye, areba aho yakubise kuko abasha kumenya igice cy'umubiri yahamije ibuye, ndetse imvugo yavugiye muri uru Rukiko ikaba ari nayo ihura neza n'inyandikomvugo y'ibyabonywe n'Ubugenzacyaha nk'uko yagarutsweho haruguru, igaragaza ko umurambo wa nyakwigendera wabonetse ufite igikomere gishyashya mu musaya hafi ya nyiramivumbi, kikivirirana amaraso, icyo gice cy'umubiri kikaba ari mu cyico, ibyo hamwe n'ibindi byagaragajwe haruguru bikaba bisobanura nta shiti ko icyaha gikwiye guhama Dukuzumuremyi ari ubwicanyi, aho kuba gukubita cyangwa gukomeretsa byateye urupfu, kuko yakubise nyina mu cyico akoresheje inkintu gishobora kwica.

[16] Kubera izo mpamvu, Urukiko rw'Ubujurire rurasanga nk'uko byasabwe n'Ubushinjacyaha, Dukuzumuremyi agomba guhamwa n'icyaha cy'ubwicanyi, bityo ubusabe bwabwo bukaba bufite ishingiro.

b. Kumenya niba Dukuzumuremyi yagabanyirizwa igihano

[17] Dukuzumuremyi avuga ko kuva mu ntangiriro yemeye icyaha aregwa cyo kuba yarakubise nyina Nyirabirayi Asinathe bikamuviramo gupfa, ko kuva yafatwa n'inzego z'iperereza yasobanuye ko we na nyina bari bavanye mu kabare kunywa inzoga, bageze mu rugo basanga mushiki we yatetse arabagaburira, maze nyina afata ibyo biryo arabimena avuga ko ari bibi, bituma nawe arakara baratongana, maze abaye nk'umwitaruyeho gato, yiruka, nko mu ntera ya metero ebyiri, afata ibuye ararimutera, rimukomeretsa mu mutwe, we n'abaturanyi bamujyana kwa muganga, ariko nka nyuma y'iminsi itatu aza gupfa. Asaba uru Rukiko kumugabanyiriza igihano kuko icyaha yakoze atari yakigambiriye, ndetse ko nta na makimbirane bari basanganywe, ariko Urukiko Rukuru, Urugereko rwa Musanze rukaba rwaranze kumugabanyiriza igihano.

[18] Me Umugwaneza Diane akomeza avuga ko Urukiko Rukuru, Urugereko rwa Musanze rwanze kugabanyiriza Dukuzumuremyi igihano, ruvuga ko ukwemera icyaha kwe gushidikanywaho, nyamara iyo urebye uko yisobanuye usanga yaravugishije ukuri kuko yemeye ko yakubise nyina ibuye, kandi nyuma yaho akaba yarahise amujyana kwa muganga, ko ndetse ibi byerekana ko atigeze agambirira kumwica, ahubwo kuba yaramukubise ari ibintu byaje ako kanya bari gutongana, ko yamukundaga akamwitaho n'ubwo ku bw'amahirwe make yaje kwitaba Imana,

akaba asaba uru Rukiko kwemeza ko ukwemera icyaha kwe kudashidikanywaho, rukamugabanyiriza igihano, nibura kugeza ku gifungo kingana n'igihe amaze muri gereza.

[19] Ubushinjacyaha buvuga ko impamvu y'ubujurire bwa Dukuzumuremyi yo gusaba kugabanyirizwa igihano kuko yemera icyaha, kandi akaba yarabikoze kuva mu ntangiriro, nta gaciro ikwiye guhabwa, ko atagaragaza icyo anenga isesengura ryakozwe n'Urukiko Rukuru, Urugereko rwa Musanze rwanze kumugabanyiriza igihano, kuko rutashingiye gusa ku bugome yakoranye icyaha, ko ahubwo rwanashingiye kukwivuguruza yagize mu mvugo ze zitandukanye, ko rero nta mpamvu nyoroshyacyaha zihari zatuma agabanyirizwa igihano, ko usibye n'ibyo kandi Umucamanza adategetswe byanze bikunze gushingira ku mpamvu nyoroshyacyaha yo kuba uregwa yemera icyaha ngo amugabanyirize igihano, ko ashobora no kutakigabanya igihe asanze bidakwiye, ko ibyo ari nako byemejwe mu rubanza n° RPA 0282/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 12/3/2010, haburana Ubushinjacyaha na Nyirangondo Virginie.

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[20] 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 (….).

[21] Ingingo ya 58, igika cya mbere, y'iryo Tegeko iteganya ko "Umucamanza ubwe ni we ugena niba impamvu nyoroshyacyaha zemezwa n'umucamanza zahabwa agaciro''. Igika cya kabiri cy'iyo ngingo giteganya ko "Kwemeza impamvu nyoroshyacyaha bigomba gusobanurwa mu cyemezo cy'urukiko''.

[22] Nk'uko bigaragara mu gace ka munani (8) n'aka cyenda (9) tw'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Musanze rwasobanuye ko Dukuzumuremyi yaranzwe no kugenda yivuguruza kuva urubanza rugitangira, kuko yabanje kuvuga ko hari uwo bafatanyije gukubita nyina, ubundi avuga ko yari wenyine, bikaba bigaragaza ko atavugisha ukuri kandi ko nta kwicuza afite, ko uko kwemera icyaha kwe gushidikanywaho, kukaba kutagomba kumubera impamvu ituma agabanyirizwa igihano. Rwasobanuye kandi ko uretse n'ibyo atari itegeko ko umucamanza ashingira kuri uko kwemera icyaha ngo agabanye igihano, ko ashobora no kutakigabanya mu gihe asanze bidakwiye.

[23] Dosiye y'urubanza igaragaza imvugo z'uwitwa Nyirakamana Penina, umukobwa wa nyakwigendera, wabajijwe mu Bugenzacyaha ku wa 15/10/2019, aho yavuze ko nyina yishwe na Dukuzumuremyi akoresheje inkoni n'amabuye, ariko ko atahise apfa, ko yaje gupfa nyuma. Hari kandi imvugo z'uwitwa Nzabonimpa Emmanuel wabajijwe mu Bugenzacyaha ku wa 16/10/2019, uvuga ko ariwe wafashe Dukuzumuremyi amujyana kuri police, kandi ko yumvise Dukuzumuremyi avuga ko yakubise nyina inkoni n'amabuye, bapfuye inzoga. Muri dosiye hari n'inyandiko-mvugo y'ibyabonywe n'Ubugenzacyaha ku wa 12/10/2019 igaragaza ko basanze umurambo wa Nyirabirayi Asinathe mu nzu uryamye hasi, ufite igikomere ku musaya w'ibumoso hafi ya nyiramivumbi, ko icyo gikomere bigaragara ko ari gishya, kuko basanze kivirirana amaraso.

[24] Mu bujurire bwa Dukuzumuremyi muri uru Rukiko, avuga ko yatonganye na nyina bavanye mu kabare kunywa inzoga, hanyuma amukubita ibuye mu mutwe riramukomeretsa, aza gupfa, ko asaba imbabazi kuko atigeze agambirira kumwica, kandi akaba yaremeye icyaha kuva mu ntangiriro, agasaba ko ibyo byose byashingirwaho akagabanyirizwa igihano.

[25] Isesengura ry'ingingo ya 49 n'iya 58 z'Itegeko n˚ 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru ryumvikanisha 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.

[26] Urukiko rw'Ubujurire rurasanga ku bireba Dukuzumuremyi, nk'uko bigaragara mu duce tubanziriza aka, koko yaragiye ahinduranya imvugo ze, nk'uko Urukiko Rukuru, Urugereko rwa Musanze rwabibonye, rwemeza ko ukwemera icyaha kwe kutuzuye, ko kudakwiye kumubera impamvu nyoroshyacyaha, yashingirwaho agabanyirizwa igihano, ndetse muri uru Rukiko bwo akaba avuga ko ibuye yateye umubyeyi we yarimuteye mu mutwe, n'ubwo agaragaza ko atari agamije kumwica, iyi mvugo ya nyuma ikaba ariyo ihura neza n'ibivugwa mu nyandikomvugo y'ibyo Ubugenzacyaha bwabonye ku murambo wa nyankwigendera, nk'uko yagarutsweho haruguru, ko basanze uwo murambo ufite igikomere mu musaya, kikivirirana amaraso, ibi bikaba byumvikanisha imbaraga Dukuzumuremyi yakoresheje mu gukubita Nyirabirayi Asinathe (umubyeyi umubyara), bikanagaragaza uburemere bw'icyaha yakoze, ndetse n'ingaruka cyateje, ugereranije n'impamvu yo kuba yemera icyaha, we ashingiraho asaba kugabanyirizwa igihano, ikaba nta gaciro ikwiye guhabwa. Ibyo byose kandi bisesenguriwe hamwe n'ibiteganywa mu ngingo ya 49 n'iya 58 z'Itegeko n˚ 68/2018 ryo ku wa 30/8/2018 ryagarutsweho haruguru, bikaba byumvikanisha ko igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni zirindwi (7.000.000 Frw) yahawe, gikwiranye n'imigendekere y'uko Dukuzumuremyi yakoze icyaha, bityo nta makosa Urukiko Rukuru, Urugereko rwa Musanze rwakoze rwanga kumugabanyiriza igihano.

[27] Kubera izo mpamvu, Urukiko rw'Ubujurire rurasanga hashingiwe ku bimaze kuvugwa haruguru, ubujurire bwa Dukuzumuremyi bushingiye ku gusaba kugabanyirizwa igihano, nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwatanzwe na Dukuzumuremyi nta shingiro bufite.

[29] Rwemeje ko urubanza n° RPA 00616/2019/HC/MUS rwaciwe ku wa 21/9/2020 n'Urukiko Rukuru, Urugereko rwa Musanze, rujuririrwa, rudahindutse.

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