UBUSHINJACYAHA v. RURANGWA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00306/2021/CA (Rugabirwa, P.J.) 29 Nzeli 2022]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Igihano – Uregwa ntiyagabanyirizwa igihano mu gihe atemera icyaha ku buryo budashidikanywaho.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe, Ubushinjacyaha burega uwitwa Rurangwa kuba yarakoze icyaha cyo gukubita no gukomeretsa ku bushake byateye urupfu, buvuga ko uwitwa Ruhangintwari yatashye yasinze, nuko aza kwikubita mu nsi y'umugina ananirwa kuhiyegura, noneho Rurangwa n'undi witwa Munyankindi baza kuhamusanga bamubonye bamuhamagara bamubaza uwo ariwe kuko bari bamuyobewe, nyamara we ntiyashobora kubitaba nuko Rurangwa atangira kumukubita inkoni mu mpyiko bigera ubwo bamwegura bamujyana ku muhanda, Rurangwa arongera amukubita inkoni mu nsi y'umukondo ari nabyo byamuviriyemo kuremba ageze mu rugo, ku buryo yaje kujyanwa kwa muganga apfira ku bitaro bya CHUB. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cyo gukubita no gukomeretsa ku bushake byateje urupfu, rumuhanisha igifungo cy'imyaka cumi n'itanu (15) n'ihazabu ingana n'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw).

Uregwa yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, avuga ko Urukiko rubanza rutitaye ku buhamya bw'Umuyobozi w'Umudugudu yari atuyemo kandi ari ikimenyetso kigaragaza ko urupfu rwa nyakwigendera nta sano rufitanye n'inkoni yamukubise. Urwo Rukiko rwaciye urubanza rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

Uregwa yarongeye ajuririra urwo rubanza mu Rukiko rw'Ubujurire, avuga ko Urukiko Rukuru rwamuhamije icyaha aregwa rumuhanisha ibihano biremereye rudasobanuye impamvu rutahaye agaciro raporo y'Umuyobozi w'Umudugudu yemejwe n'Akagari igaragaza ko nyakwigendera atigeze amurega muri ubwo Buyobozi ko yamukoreye icyaha, ko ahubwo Rurangwa atazi icyishe nyakwigendera, ariko mu iburanisha ry'urubanza, avuga ko akwiye kugabayirizwa ibihano kubera ko yemera icyaha akanagisabira imbabazi.

Ubushinjacyaha bwo bwaburanye buvuga ko uregwa yaburanye ahakana icyaha aregwa kuva agifatwa, ariko ko Inkiko zombi zakimuhamije kubera ko zasanze nta gushidikanya ko nyakwigendera yishwe n'ibikomere yatewe n'ikoni yamukubise mu nda, ndetse ko no mwanzuro we w'ubujurire yatanze muri uru Rukiko yakomeje guhakana icyaha , buvuga ko ko kuba noneho imbere y'uru Rukiko, Rurangwa avuga ko yemera icyaha akanagisabira imbabazi, uru Rukiko rutabiha agaciro kuko uko kwemera icyaha gutanzwe impitagihe bitewe n'uko yitesheje amahirwe yo kucyemerera mu Rukiko Rwisumbuye no mu Rukiko Rukuru, ko ahubwo asanga uregwa agamije ko urubanza rwongera kuburanishwa bundi bushya kandi bitemewe ku rwego rw'ubujurire.

Incamake y'icyemezo: Uregwa ntiyagabanyirizwa igihano mu gihe atemera icyaha ku buryo budashidikanywaho, bityo nta kosa Urukiko Rukuru, Urugereko rwa Nyanza, rwakoze mu kutamugabanyiriza igihano kubera ko atemeraga icyo cyaha

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:
Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 121, igika cya 5.
Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 183.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe, Ubushinjacyaha burega Rurangwa Samuel kuba yarakoze icyaha cyo gukubita no gukomeretsa ku bushake byateye urupfu, kubera ko ku wa 11/03/2019, mu gihe cya saa sita z'ijoro, uwitwa Ruhangintwari Innocent yatashye yasinze, ageze mu Mudugudu wa Gitara, Akagari ka Coko yikubita mu nsi y'umugina ananirwa kuhiyegura, noneho Rurangwa Samuel na Munyankindi Callixte baza kuhamusanga bamubonye bamuhamagara bamubaza uwo ariwe kuko bari bamuyobewe, nyamara we ntiyashobora kubitaba noneho Rurangwa Samuel atangira kumukubita inkoni mu mpyiko bigera ubwo bamwegura bamujyana ku muhanda, Rurangwa Samuel arongera amukubita inkoni mu nsi y'umukondo ari nabyo byamuviriyemo kuremba ageze mu rugo, ku buryo ku wa 17/3/2019 yajyanywe kwa muganga apfira ku bitaro bya CHUB. Rurangwa Samuel yaburanye yemera icyaha aregwa.

[2] Urwo Rukiko rwaciye urubanza nº RP 00090/2019/TGI/NYBE ku wa 09/05/2019, rwemeza ko Rurangwa Samuel ahamwa n'icyaha cyo gukubira no gukomeretsa ku bushake byateje urupfu, rumuhanisha igifungo cy'imyaka cumi n'itanu (15) n'ihazabu ingana n'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw).

[3] Rurangwa Samuel yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, avuga ko Urukiko rubanza rutitaye ku buhamya bw'Umuyobozi w'Umudugudu Ruhangintwari Innocent yari atuyemo kandi ari ikimenyetso kigaragaza ko urupfu rwa nyakwigendera nta sano rufitanye n'inkoni yamukubise. Urwo Rukiko rwaciye urubanza nº RPA 00544/2019/HC/NYZ ku wa 30/06/2020, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

[4] Rurangwa Samuel yajuririye na none urwo rubanza mu Rukiko rw'Ubujurire, avuga ko Urukiko Rukuru rwamuhamije icyaha aregwa rumuhanisha ibihano biremereye rudasobanuye impamvu rutahaye agaciro raporo y'Umuyobozi w'Umudugudu yemejwe n'Akagari igaragaza ko Ruhangintwari Innocent atigeze amurega muri ubwo Buyobozi ko yamukoreye icyaha, ko ahubwo Rurangwa Samuel atazi icyishe nyakwigendera, ariko mu iburanisha ry'urubanza, avuga ko akwiye kugabayirizwa ibihano kubera ko yemera icyaha akanagisabira imbabazi.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 08/09/2022, Rurangwa Samuel yunganiwe na Me Ntazika Néhémie, naho Ubushinjacyaha buhagarariwe na Niyibizi Tite. Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

- **Kumenya niba Rurangwa Samuel yagabanyirizwa ibihano kubera ko yemeye icyaha akanagisabira imbabazi.**

[6] Rurangwa Samuel avuga ko akwiye kugabanyirizwa igihano kubera ko yemera icyaha akanagisabira imbabazi. Asobanura ko Munyankindi Callixte yamuhamagaye saa tanu z'ijoro ryo ku wa 11/03/2019, ko hari umuntu uryamye imbere y'inzu y'umukecuru we witwa Mukagashugi Agnès ariko ko batazi uwo ari we, ko yamanutse ahasanga uwo muntu aryamye, aramuhamagara, ntiyitaba, ko yamukubise inkoni ku kibuno aricura amubwira ko yasinze, kandi ko basanze ari Ruhangintwari Innocent wari wanyoye inzoga yasinze, ko yamweguye afatanyije na Munyankindi Callixte baramujyana bamugeza ku muhanda banamusaba gutaha arabyanga kubera ko yavugaga ko bamwibye bateri ya telefoni ye anafata Rurangwa Samuel mu ijosi, ko ibyo byatumye amukubita indi nkoni mu bitugu ahita ataha.

[7] Avuga kandi ko mu gitondo cyo ku wa 12/03/2019, Ruhangintwari Innocent yagarutse kureba aho yaraye ataye bateri ya telefoni ye, anayimushinja imbere y'Ubuyobozi bw'Umudugudu yari yahamagaje, ariko ko yanabusobanuriye ko nta kibazo Rurangwa Samuel yamuteje kimubangamiye, ko ahubwo yaguye ku mugina, ndetse ko uwitwa Vital yamuhaye bateri ye, basangira ikigage, ariko nyuma y'aho ku wa 18/03/2019, Ruhangintwari Innocent yarwariye mu rugo, araremba, bituma bamujyana kwa muganga muri CHUB, aho yaje kugwa kuwa 20/03/2019, ariko ko atakwemeza ko yishwe n'inkoni yamukubise, ubundi akemera ko arizo zatumye apfa, asaba ko yagabanyirizwa igihano kubera ko yemera icyaha akanagisabira imbabazi, ariko ko nta mugambi yari afite wo kumwica, ndetse ko nta n'ubugome yakoranye icyaha.

[8] Me Ntazika Néhémie, umwunganira, avuga ko Rurangwa Samuel yemera ko afite aho yahuriye na Ruhangintwari Innocent kandi ko yamukubise inkoni ebyiri ku kibuno agira ngo amugangahure abyuke n'ubwo ntawakwemeza ko arizo zamwishe, ariko ko akwiye kugabanyirizwa igihano kuko abatangabuhamya bose babajijwe barimo Nsabimana Félicien, Sebanani Xavier na Mukasharangabo Anisie bemeje ko ntacyo Rurangwa Samuel yari asazwe apfa na Ruhangintwari Innocent.

[9] Uhagarariye Ubushinjacyaha avuga ko Rurangwa Samuel yaburanye ahakana icyaha aregwa kuva agifatwa, ariko ko Inkiko zombi zakimuhamije kubera ko zasanze nta gushidikanya ko nyakwigendera Ruhangintwari Innocent yishwe n'ibikomere yatewe n'ikoni yamukubise mu nda, ndetse ko no mwanzuro we w'ubujurire yatanze muri uru Rukiko yakomeje guhakana icyaha akavuga ko Urukiko Rukuru rwamuhamije icyaha rwirengagije raporo y'Ubuyobozi bw'Inzego z'Ibanze igaragaza ko nyakwigendera Ruhangintwari Innocent atamureze ko yamukubise, ariko ko Urukiko Rukuru rwasanze iyo raporo itahabwa agaciro kuko itavuguruza imvugo z'abatangabuhamya bemeje ko Rurangwa Samuel yamukubise kuko nta muyobozi n'umwe wari uhari igihe Ruhangintwari Innocent yakubitwaga.

[10] Avuga kandi ko kuba noneho imbere y'uru Rukiko, Rurangwa Samuel avuga ko yemera icyaha akanagisabira imbabazi, asaba ko uru Rukiko kudaha agaciro uko kwemera icyaha kuko gutanzwe impitagihe bitewe n'uko yitesheje amahirwe yo kucyemerera mu Rukiko Rwisumbuye no mu Rukiko Rukuru, ko ahubwo asanga uregwa agamije ko urubanza rwongera kuburanishwa bundi bushya kandi bitemewe ku rwego rw'ubujurire kuko ingingo ya 188, igika cya 1, icya 5 n'icya 6, y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko Urukiko rw'Ubujurire rushinzwe gukosora amakosa cyangwa inenge ziri mu rubanza rujuririrwa zagaragajwe n'uwajuriye, ariko rutarenze imbibi z'icyajuririwe.

[11] Akomeza asobanura ko ibyo bihuje kandi n'umurongo watanzwe n'uru Rukiko mu manza rwaciye zirimo urubanza nº RPA/GEN 00004/2019/CA rwa Munyagishari Bernard n'Ubushinjacyaha rwaciwe ku wa 07/05/2021, aho rwasobanuye ko Urukiko rw'Ubujurire rushinzwe gukosora amakosa yakozwe n'Urukiko rubanza, aho kuburanisha urubanza bundi bushya kuko bitari mu nshingano zarwo, bityo ko rutashingira ku kwemera icyaha MUNYAGISHARI Bernard akoreye bwa mbere ku rwego rw'ubujurire.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 121, igika cya 5, y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko "Iyo gukubita cyangwa gukomeretsa byateye urupfu, igihano kiba igifungo kitari munsi y'imyaka cumi n'itanu (15) ariko kitarenze imyaka makumyabiri (20) n'ihazabu y'amafaranga y'u Rwanda atari munsi ya miliyoni eshanu (5.000.000 Frw) ariko atarenze miliyoni zirindwi (7.000.000 Frw)".

[13] Ku bijyanye n'igabanyagihano Rurangwa Samuel asaba kubera ko yemeye icyaha akanagisabira imbabazi imbere y'uru Rukiko ingingo ya 59, 1º na 3º y'Itegeko rimaze kuvugwa haruguru, iteganya ko "Umucamanza ashobora kugabanya ibihano nk'iyo: ushinjwa, mbere yo gukurikiranwa, yemeye icyaha akagisabira imbabazi uwo yakoreye icyaha n'umuryango nyarwanda mu buryo budashidikanywa, akicuza kandi akishyura ibyo yangije nk'uko bari babimutegerejeho n'iyo mu ntangiriro z'iburanisha ku rwego rwa mbere, ushinjwa yireze akemera icyaha mu buryo budashidikanywa".

[14] Naho ku birebana n'uko ubujurire bukorwa, ingingo ya 183, igika cya mbere, uduce twa 5° na 6° y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko ujurira agomba kugaragaza urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa, akanatanga ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko, bivuze ko iyo uwajuriye atagaragaje inenge ziri mu rubanza rwajuririwe, nta n'icyo urukiko rwajuririwe rwakosora, ko ahubwo hakwiye kugumaho imikirize y'urubanza rwajuririwe.

[15] Ku birebana n'uru rubanza, inyandiko ziri muri dosiye zigaragaza ko mu Bugenzacyaha, Rurangwa Samuel yahakanye icyaha avuga ko atigeze akubita Ruhangintwari Innocent, ageze mu Bushinjacyaha yemera ko yamukubise inkoni ebyiri (2) ku kibuno n'indi imwe yo mu mugongo, ariko ko atigeze amukubita inkoni ebyiri munsi y'umukondo, na none ageze mu Rukiko Rwisumbuye rwa Nyamagabe, yemera ko yamukubise inkoni ebyiri (2) ku kibuno n'indi yo mu bitugu, imbere y'Urukiko Rukuru, Urugereko rwa Nyanza, ahakana icyaha avuga inkoni ebyiri (2)

yamukubise ku kibuno atarizo zamwishe, naho imbere y’uru Rukiko, avuga ko yamukubise inkoni ku kibuno no ku rutugu, hamwe akavuga ko atarizo zamwishe, ubundi akavuga ko arizo zamwishe, ariko ko hari ugushidikanya.

[16] Muri dosiye, hari umutangabuhamya witwa Munyankindi Callixte wahurujwe na Rurangwa Samuel muri iryo joro, wasobanuye ko Rurangwa Samuel yatse nyina ikibando yari afite agikubita Rurangwa Innocent ku mpyiko inshuro ebyiri n’izindi nkoni ebyiri yamukubise mu mugongo, ndetse hari n’icyemezo cya muganga cyo ku wa 20/03/2019, kigaragaza ko nyakwigendera Ruhangintwari Innocent yishwe n’uko yaviriye amaraso mu nda.

[17] Urukiko rusanga Rurangwa Samuel atagabanyirizwa igihano kubera ko atemeye icyaha aregwa mu buryo budashidikanywaho mu Nzego z’iperereza no mu ntangiriro z’iburanisha ku rwego rwa mbere nk’uko biteganywa n’ingingo ya 59, igika cya mbere, agace ka 1º na 3º, y’Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru.

[18] Hashingiwe kandi ku ngingo ya 183, igika cya mbere, uduce twa 5° na 6°, y’Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, Urukiko rusanga kuba yarageze kuri uru rwego rw’ubujurire bwa kabiri Rurangwa Samuel akavuga ko noneho yahisemo kwemera icyaha cyo gukubita no gukomeretsa ku bushake byateje urupfu akanagisabira imbabazi kugira ngo agabanyirizwe igihano, uko kwemera icyaha kwe kutafatwa nk’impamvu y’ubujurire kuko, uretse no kuba kutuzuye bitewe n’uko atavugisha ukuri ku mikorere y’icyaha n’impamvu yamuteye gukubira Ruhangintwari Innocent mu cyicyo (mu mpyiko) bigatuma avira amaraso mu nda bikamuviramo gupfa nk’uko byemejwe na muganga, bigaragara ko ntacyo mu by’ukuri anenga imikirize y’urubanza rwajuririwe muri uru Rukiko rwamuhamije icyo cyaha yahakanaga hashingiwe ku bimenyetso biri muri dosiye atashoboye kuvuguruzwa.

[19] Urukiko rusanga rero, kuba nta kosa Urukiko Rukuru, Urugereko rwa Nyanza, rwakoze mu kwemeza ko Rurangwa Samuel yakoze icyaha cyo gukubita no gukomeretsa ku bushake byateje urupfu no kutamugabanyiriza igihano kubera ko atemeraga icyo cyaha nk’uko byasobanuwe haruguru, bigaragara ko ubujurire bwe nta shingiro bufite.

III. ICYEMEZO CY’URUKIKO

[20] Rwemeje ko ubujurire bwa Rurangwa Samuel nta shingiro bufite;

[21] Ruvuze ko imikirize y’urubanza nº RPA 00544/2019/HC/NYZ rwaciwe n’Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 30/06/2020, idahindutse, bivuze ko igifungo cy’imyaka cumi n’itanu (15) n’ihazabu ingana n’amafaranga y’u Rwanda miliyoni eshanu (5.000.000 Frw), yahanishijwe bigumyeho;

[22] Rutegetse ko amagarama y’uru rubanza aherera ku Isanduku ya Leta.