UBUSHINJACYAHA v. MURINDAHABI

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00293/2021/CA (Kaliwabo, P.J.) 15 Kanama 2022]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Agaciro k'imvugo zivugiwe imbere y'Urukiko n'izavugiwe munzego z'iperereza – Urukiko ntirutegetswe kwemeza imvugo zivugiwe imbere yarwo mu gihe zivuguruza izavugiwe imbere y'inzego z'iperereza, ahubwo ubwarwo nirwo rukora isesengura kugira ngo rumenye imvugo ihuza n'ukuri kw'ibyabaye. Umucamanza uburanisha urubanza mu mizi ni we wemeza ko ibyo uregwa yemeye mu gihe cy'iperereza ari ukuri kudashidikanywaho n'iyo uregwa yakwisubiraho mu rukiko akagira ibyo ahindura cyangwa ahakana ku byo yari yavuze mbere.

Incamake y'icyibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ubushinjacyaha bukurikiranyeho Murindahabi Jean de Dieu icyaha cyo gucuruza urumogi, buvuga ko ku itariki ya 24/5/2019 yafashwe na Polisi, afatanwa udupfunyika 16 tw'urumogi yacuruzaga. Uregwa yaburanye ahakana icyaha avuga ko urumogi yafatanywe, ari urwo yari ahishuye rumaze kuhashyirwa n'umuntu wahise agenda. Urukiko rwemeje ko ahamwa n'icyaha cyo gucuruza ibiyobyabwenge, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25 ans) n'ihazabu y'amafaranga miliyoni makumyabiri (20. 000.000 Frw). Uregwa ntiyishimiye imikirize, yajuririye Urukiko Rukuru asaba ko yarenganurwa ngo kuko yahaniwe icyaha atakoze cyo gucuruza urumogi ndetse n'imbabazi yasabye ku cyaha cyo gufatanwa urumogi ntizihabwe agaciro. Urukiko Rukuru rwemeza ko ubujurire nta shingiro bufite kandi ko urubanza yajuririye rudahindutse.

Murindahabi yajuririye Urukiko rw'Ubujurire avuga ko inkiko zibanza zamurenganyije zikamuhanira icyaha atakoze cyo gucuruza urumogi nyamara yaragombye guhanirwa gufatanwa no kunywa urumogi kuko urwo yafatanywe ari urwe rwo kunywa, asobanura ko mu Bugenzacyaha yakorewe iyicarubozo ryatumye agira igihunga bimutera kwemera icyaha cyo gucuruza urumogi atakoze, ageze no mu bushinjacyaha yemera icyaha atakoze bityo akaba asaba ko icyo kimenyetso kigomba guteshwa agaciro.

Ubushinjacyaha bwireguye buvuga ko ubujurire bwa Murindahabi nta shingiro bufite kubera ko icyaha yahaniwe ari nacyo yakoze kandi ko cyatangiwe ibimenyetso, ko kandi imvugo yemera icyaha yayitanze ku bushake bwe nta gahato mu Bugenzacyaha ndetse yanayisubiyemo imbere y'Ubushinjacyaha, ko kandi iyo mvugo ye ishyigikirwa n'imvugo z'abatangabuhamya bamushinja ko ari we wabagurishaga urumogi, bityo ingingo yo kuvuga ko yemeye icyaha kubera iyicarubozo ikaba nta shingiro ifite.

Incamake y'icyemezo: Urukiko ntirutegetswe kwemeza imvugo zivugiwe imbere yarwo mu gihe zivuguruza izavugiwe imbere y'inzego z'iperereza, ahubwo ubwarwo nirwo rukora isesengura kugira ngo rumenye imvugo ihuza n'ukuri kw'ibyabaye. Umucamanza uburanisha urubanza mu mizi ni we wemeza ko ibyo uregwa yemeye mu gihe cy'iperereza ari ukuri kudashidikanywaho n'iyo uregwa yakwisubiraho mu rukiko akagira ibyo ahindura cyangwa ahakana ku byo yari yavuze mbere. Bityo inyito y'icyaha yahamijwe n'urukiko rubanza, niyo nyito ikwiranye n'icyaha akurikiranyweho.

Urubanza rujuririrwa ruhindutse ku birebana n'ibihano gusa.

Amategeko yakoreshejwe:

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, ingingo ya 11

Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49 na 263

Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu mumanza n'itangwa ryabyo, ingingo ya 3

Imanza zashingiwe ho:

Urubanza RPA 0010/06/CS/ R PA 001106/CS - RPA 0012/06/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/7/2008, haburana Ubushinjacyaha na Sgt Ntaganira Eugène, Civ.Ntagara Gilbert na Civ. Nduwayezu Théogène

Ubanza RPAA 00408/2020/CA rwaciye n'Urukiko rw'Ubujurire kuwa 27/06/2022 haburana Ubushinjacyaha na Niyitegeka Augustin

Urubanza RPAA 00132/2021/CA rwaciye n'Urukiko rw'Ubujurire kuwa 15/07/2022 haburana Ubushinjacyaha na Uyisenga Théogène,

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ubushinjacyaha bukurikiranyeho Murindahabi Jean de Dieu icyaha cyo gucuruza urumogi, buvuga ko ku itariki ya 24/5/2019 yafashwe na Polisi, afatanwa udupfunyika 16 (boules 16) tw'urumogi yacuruzaga. Murindahabi Jean de Dieu yaburanye ahakana icyaha avuga ko urumogi yafatanywe, ari urwo yari ahishuye rumaze kuhashyirwa n'umuntu wahise agenda.

[2] Mu rubanza RP 00708/2019/TGI/NYGE rwaciwe kuwa 02/06/2019, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko Murindahabi Jean de Dieu ahamwa n'icyaha cyo gucuruza ibiyobyabwenge, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25 ans) n'ihazabu ingana n'amafaranga miliyoni makumyabiri (20. 000.000 Frw) ndetse rutegeka ko urumogi rwafatiriwe runyagwa, rugatwikwa.

[3] Mu kumuhamya icyaha, urukiko rwashingiye ku nyandiko mvugo Murindahabi yashyizeho umukono ko afatanywe udupfunyika 16 tw'urumogi, no ku buhamya bwa Mutesi Dyna na Niyoyita Olivier, abanyeshuri bamushinja ko yabagurishaga urumogi mu kigo bigamo. Urukiko rwasanze Murindahabi Jean de Dieu agomba guhanishwa igifungo cy'imyaka 25 n'ihazabu ya 20.000.000 mu mwanya w'igifungo cya burundu kubera ko ari ubwa mbere aguye mu cyaha.

[4] Murindahabi Jean de Dieu yajuririye Urukiko Rukuru asaba ko yarenganurwa ngo kuko yahaniwe icyaha atakoze cyo gucuruza urumogi ndetse n'imbabazi yasabye ku cyaha cyo gufatanwa urumogi ntizihabwe agaciro.

[5] Mu rubanza RPA 01357/2019/HC/KIG rwaciwe kuwa 29/7/2020, Urukiko rwemeje ko ubujurire bwa Murindahabi Jean de Dieu nta shingiro bufite, rwemeza ko urubanza yajuririye rudahindutse.

[6] Murindahabi Jean de Dieu yajuririye Urukiko rw'Ubujurire avuga ko inkiko zibanza zamurenganyije zikamuhanira icyaha atakoze cyo gucuruza urumogi nyamara yaragombye guhanirwa gufatanwa no kunywa urumogi kuko urwo yafatanywe ari urwe rwo kunywa. Yavuze ko mu Bugenzacyaha yakorewe iyicarubozo ryatumye yemera icyaha cyo gucuruza urumogi atakoze, bityo ko icyo kimenyetso kigomba guteshwa agaciro.

[7] Ubushinjacyaha bwireguye buvuga ko ubujurire bwa Murindahabi nta shingiro bufite kubera ko icyaha yahaniwe ari nacyo yakoze kandi ko cyatangiwe ibimenyetso, ko kandi imvugo yemera icyaha yayitanze ku bushake bwe nta gahato.

[8] Iburanisha ryabaye kuwa 5/7/2022 Murindahabi Jean de Dieu yunganiwe na Me Ndayisabye Alex naho Ubushinjacyaha buhagarariwe na Rudatinya N. Gaspard, Umushinjacyaha ku rwego rw'Igihugu.

[9] Urukiko rurasuzuma niba Murindahabi Jean de Dieu yaremeye icyaha kubwo gukorerwa iyicarubozo no kumenya niba yahanirwa icyaha cyo gufatanwa urumogi mu mwanya w'icyaha cyo kurucuruza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

a. Kumenya niba mu Murindahabi yaremejwe icyaha kubera iyicarubozo

[10] Murindahabi Jean de Dieu yunganiwe na Me Alex Ndayisabye yajuriye asaba ko imvugo ye yakoreye mu Bugenzacyaha yemera icyaha cyo gucuruza ibiyobyabwenge yateshwa agaciro kubera ko yakorewe iyicarubozo ko kandi byamuteye igihunga bituma no mu Bushinjacyaha yemera icyaha atakoze.

[11] Ubushinjacyaha bwireguye buvuga ko imvugo yemera icyaha Murindahabi yavugiye mu Bugenzacyaha yayikoze nta gahato ashyizweho ndetse akayisinyira, ko iyi mvugo yayisubiyemo imbere y'Ubushinjacyaha, ko kandi iyi mvugo ishyigikirwa n'imvugo z'abatangabuhamya bamushinja ko ari we wabagurishaga urumogi, bityo ingingo yo kuvuga ko yemeye icyaha kubera iyicarubozo ikaba nta shingiro ifite.

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[12] Ingingo ya 3 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu nkiko n'itangwa ryabyo ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[13] Urukiko rurasanga kuwa 28/082019 Mbarushimana ubwe yaremereye Ubugenzacyaha ko acuruza urumogi kandi ko amaze amezi 3 arucuruza ndetse avuga ko arurangura kwa Tonton akaba avugana n'abakiliya bamugurira kuri telefoni, ndetse asobanura ko yarucuruzaga kugira ngo azabone amafaranga yo kuzakorera uruhushya rwo gutwara ibinyabiziga.

[14] Urukiko rurasanga, uburyo Murindahabi asobanura imikorere y'icyaha biboneka ko atari imvugo y'umuntu washyizweho agahato, ndetse kuba Niyoyita na bagenzi be barashoboye kumwerekana nk'umuntu wabagurishije urumogi kandi we avuga ko asanzwe atabazi, bikaba birwemeza ko ibyo yavuze nta gahato yashyizweho.

[15] Urukiko rurasanga nanone, Murindahabi uvugwa ko yashyizweho agahato mu Bugenzacyaha adashobora kurwemeza ko mu Bushinjacyaha yemeye kubera igihunga kuko nta kintu yikangaga cyari gutuma asubiramo imvugo we ahamya ko yari yayivuze kubera agahato, ahubwo ibyo yavuze bikaba byuzuzanya kandi akaba yarabivuze ku bushake bwe. Rurasanga ingingo y'ubujurire isaba gutesha agaciro imvugo za Murindahabi yavugiye mu Bugenzacyaha no mu Bushinjacyaha nta shingiro ifite.

b. Kumenya niba Murindahabi Jean de Dieu yahanirwa icyaha cyo gufatanwa urumogi mu mwanya w'icyaha cyo kurucuruza

[16] Murindahabi Jean de Dieu yunganiwe na Me Ndayisabye Alex yajuriye avuga ko yahaniwe icyaha atakoze cyo gucuruza ibiyobyabwenge, ko udupfunyika 16 tw'urumogi yafatanywe ari utwe two kunywa, ko imvugo z'abatangabuhamya batageze imbere y'Urukiko atazemera, naho ize bwite akaba yarazivuze kubera agahato yashyizweho. Yakomeje avuga ko atigeze afatirwa mu gikorwa cyo gucuruza urumogi kuko atashoboraga kwinjira mu kigo cy'ishuri ajyanywe no gucuruza urumogi.

[17] Me Alex Ndayisabye avuga ko ibisobanuro Urukiko Rukuru rwatanze ruhamya Murindahabi icyaha cyo gucuruza urumogi binyuranyije n'ibiteganywa n'ingingo ya 263 igika cya 3 y'itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange kuko ruterekanye stock cyangwa entrepot, ko kandi udupfunyika 16 tw'urumogi tudashobora gufatwa nka stock, bityo icyemezo cyafashwe kijyanye no kubika urumogi kikaba gikwiye guhinduka agahanirwa ko yafatanwe urumogi agahabwa igihano cy'umwaka 1 kuko yiyemerera ko urwo yafatanwe rwari urwo kunywa.

[18] Avuga kandi ko Urukiko mu kumuhamya icyaha ruterekanye uwo yarucurujeho, amafranga yarugurishije ndetse ngo runagaragaze stock ye aho yari iherereye. Yavuze ko Urukiko rwagombye kugendera mu murongo watanzwe n'uru rukiko mu rubanza RPAA 00156/2022/CA rwaciwe kuwa 27/5/2022 haburana Ubushinjacyaha na Musabyimana Elysée Sybillin, aho kugendera ku buhamya bw'abanyeshuri bugenekereje, bavuze ko ari Murindahabi wabagurishaga urumogi mu gihe nta burenganzira yari afite bwo kwinjira mu kigo cy'ishuri ajyanywe no gucuruza urumogi.

[19] Avuga ko urukiko rubibonye ukundi rwakongera rukamugabanyiriza igihano kuko Murindahabi yemera icyaha cy'uko yafatanwe urumogi ndetse akaba abyicuza akanabisabira imbabazi, iyi akaba ari indi mpamvu nyoroshyacyaha Urukiko rwashingiraho rumugabanyiriza igihano nk'uko byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza RS/INCONST/SPEC 00003/2019/SC rwaciwe ku wa 04/12/2019, rwa Me Kabasinga Florida aho rwavuze ko igihano ntayegayezwa kinyuranye n'ihame ryo guca urubanza rutabera (fair trial), rwemeza ko mu manza mpanabyaha, Umucamanza afite inshingano zo gutanga igihano gishingiye ku mikorere y'icyaha, ku myitwarire n'imibereho y'uwagikoze, ku muryango cyakorewe no ku wagikorewe, bityo ko ashingiye kuri uwo murongo asaba ko icyemezo cyafashwe n'Urukiko Rukuru cyahinduka, Murindahabi Jean de Dieu agahanishwa igifungo cy'imyaka itanu n'ihazabu ya 1,000,000fr.

[20] Avuga ko umurongo uvuzwe mu gika kibanziriza iki watanzwe n'Urukiko rw'Ikirenga ariwo wakurikijwe n'Urukiko rw'Ubujurire mu rubanza RPAA 00031/2021/CA, rwaciwe ku wa 28/10/2021 hagati ya Bahati Francoise n'Ubushinjacyaha, rukemeza ko ubutabera buboneye ari uko mu gihe hari impamvu nyoroshyacyaha zituma igihano kigabanywa, iki kigabanywa kikajya munsi y'igihano gito giteganywa n'itegeko, rumuhanisha igihano cy'imyaka icumi.

[21] Ubushinjacyaha bwireguye buvuga ko mu Rukiko Rwisumbuye Murindahabi yarezwe icyaha cyo gucuruza ibiyobyabwenge, akaba ari nacyo rwamuhamije rushingiye ku mvugo ye yemera icyaha, yavugiye mu Bugenzacyaha no mu Bushinjacyaha, ko kandi imvugo ye ishimangirwa n'ubuhamya bw'abanyeshuli yarugurishaga aribo Niyoyita, Kagina na Umutesi, byongeye kandi akaba yarafatanywe udupfunyika 16 tw'urumogi. Ubushinjacyaha bwasobanuye ko Murindahabi atahaniwe icyaha cyo kubika ibiyobyabwenge, ahubwo ko yahaniwe kurucuruza, kandi ngo akaba yararufatanwe agiye kurugurisha, ko iyo ruza kuba ari urwo kunywa atari kugendana udupfunyika 16 twose, ko kuri uru rwego yahisemo kwemera icyaha cyo gufatanwa ibiyobyabwenge agamije guhabwa igihano cyoroheje.

[22] Ubushinjacyaha bwavuze ko imanza zose zatanzweho urugero n'ubwunganizi ntacyo zamarira Murindahabi kuko yahanishijwe igifungo gito giteganyiriza icyaha cyo gucuruza ibiyobyabwenge bihambaye, ko igifungo cy'imyaka 25 ushinjwa yahawe gihuje n'ibiteganywa mu ngingo ya 60 y'Itegeko n° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, bityo busaba ko urubanza rwajuririwe rugumana agaciro karwo kuko yagabanyirijwe ibihano akaba atakongera kugabanyirizwa nk'uko byemejwe mu rubanza RPA 0066/08/CS rwaciwe kuwa 06/02/2009, Ubushinjacyaha buburana na Kabahizi Jean, aho Urukiko rw'Ikirenga rwemeje ko atagabanyirizwa ibihano nubwo bwose yemera icyaha kubera ko Urukiko rubanza rwamugabanyirije bihagije.

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[23] 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 ukora, uhinga, uhindura, utunda, ubika, uha undi, ugurisha mu gihugu ibiyobyabwengecyangwa urusobe rw'imiti ikoreshwa nka byo mu buryo bunyuranyije n'amategeko, aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa: 1 º igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda atari munsi ya miliyoni makumyabiri (20.000.000 Frw) ariko atarenze miliyoni mirongo itatu (30.000.000 Frw), ku byerekeye ibiyobyabwenge bihambaye (…).

[24] Ingingo ya 49 y'Itegeko nº 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''.

[25] Urukiko rurasanga impamvu y'ubujurire bwa Murindahabi Jean de Dieu muri uru Rukiko igamije guhindurirwa inyito y'icyaha agahanirwa icyaha cyo gufatanwa ibiyobyabwenge (urumogi) mu mwanya wo guhanirwa icyo kubicuruza no gusaba kugabanyirizwa ibihano hashingiwe ku kuba yemera icyaha, kuba aribwo bwa mbere aguye mu cyaha.

[26] Urukiko rurasanga n'ubwo Murindahabi Jean de Dieu yahinduye imvugo ageze mu Rukiko, nyamara mu ibazwa rye ryo kuwa 27/5/2019 imbere y 'Ubugenzacyaha, ubwe yemeye ko yari amaze igihe kingana n'amezi abiri acuruza urumogi, ko yaruranguraga iKabeza, akaba yarafatanywe udupfunyika 16 tw'urumogi. Mu ibazwa rye imbere y 'Ubushinjacyaha, uyu yongeye kwemera ko yafatanywe udupfunyika 16 tw'urumogi yacuruzaga, ko icyaha acyemera akaba agisabira imbabazi. Izo mvugo kandi zihuza n'ubuhamya bwa Niyoyita Olivier umwe mu banyeshuri baguraga urumogi na Murindahabi, mu buhamya yatanze kuwa 24/5/2019, yasobanuye

ko urumogi yanywaga yaruguraga na Murindahabi bakaba bari bamaze kurugura inshuro zirenga 5. Zihuza kandi n'ubuhamya bwa Kagina Emmanuel nawe waguraga urumogi na Murindahabi, Mu ibazwa rye ryo kuwa 24/5/0219 yasobanuye ko anywa urumogi agura na Murindahabi ndetse ko barumufatanye avuga urumugurisha nibwo kujya kumusaka bamusangana boules 16. Zigahuza kandi na none n'ubuhamya bwa Mutesi Dyna, aho mu ibazwa rye ryo kuwa 24/5/2022 nawe yemeje ko yafashwe ari kunywa urumogi bagenzi be bamubwiye ko baruguriye kwa Murindahabi, Ko kandi bagiye kumusaka bamusangana udupfunyika 16 tw'urumogi yacuruzaga.

[27] Urukiko rushingiye ku mvugo yemera icyaha cyo gucuruza urumogi Murindahabi Jean de Dieu yakoreye mu Bugenzacyaha no mu Bushinjacyaha, uyu akaba yarasobanuye birambuye aho yaruvanaga (Kabeza), igihe yari amaze arucuruza kingana n'amezi 2, rurasanga nta gushidikanya ko ibi yavuze ariko kuri guhuye n'imikorere y'icyaha kandi bikaba bishimangirwa n'abatangabuhamya b'abanyeshuri barimo Niyoyita Olivier, Kagina Emmanuel na Mutesi Dyna bemeje ko urumogi banywaga barugura na Murindahabi Jean de Dieu.

[28] Urukiko rurasanga, nk'uko byasobanuwe mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga,[1] Urukiko rudategetswe kwemeza imvugo zivugiwe imbere yarwo mu gihe zivuguruza izavugiwe imbere y'inzego z'iperereza, ahubwo ubwarwo arirwo rukora isesengura kugira ngo rumenye imvugo ihuza n'ukuri kw'ibyabaye.

[29] Ibimaze kuvugwa bihura kandi n'ibisobanuro bitangwa n'abahanga mu by'amategeko barimo Michel Franchimont, Ann Jacobs na Adrien Masset, mu gitabo cyabo cyitwa ″Manuel de procédure pénale″, Edition du Jeune Barreau de Liège, 1989, ku rupapuro rwa 772, ahavugwa ko mu manza nshinjabyaha, umucamanza uburanisha urubanza mu mizi ari we wemeza ko ibyo uregwa yemeye mu gihe cy'iperereza ari ukuri kudashidikanywaho n'iyo uregwa yakwisubiraho mu rukiko akagira ibyo ahindura cyangwa ahakana ku byo yari yavuze mbere (L'appréciation de la sincérité d'un aveu en matière répressive relève du pouvoir souverain du juge du fond...Le juge de fond apprécie souverainement la sincérité d'un aveu fait par le prévenu au cours de l'instruction préparatoire, même quand cet aveu a été ultérieurement rétracté devant le tribunal).

[30] Urukiko rurasanga umuntu atagirwa umucuruzi no kuba afite stock cyangwa entrepot, ahubwo igihe cyose afite ibicuruzwa uko bingana kwose kandi yiteguye kubiha umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi. Urukiko rurasanga, kuba Murindahabi yarafatanwe udupfunyika 16 yacuruzaga bitamuvanaho icyaha cyo gucuruza ibiyobyabwenge mu gihe hari ibimenyetso byerekana aho arurangura(Kabeza), abo arugurisha (Abanyeshuri nka Niyoyita Olivier, Kagina Emmanuel na Mutsesi Dyna), ibyo bikaba binyuranye n 'ibyo umwunganizi we ashaka kumvikanisha ko umucuruzi agomba kuba afite stock y'ibyo acuruza.

[31] Urukiko rurasanga nta kosa ryakozwe n'Urukiko Rukuru mu guhamya Murindahabi Jean de Dieu icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi kuko cyatangiwe ibimenyetso bihagije kandi n'uru Rukiko rukaba ariyo nyito rusanga ikwiranye n'icyaha akurikiranyweho.

c. Ku bijyanye n'igihano

[1] Reba urubanza RPA 0010/06/CS/ R PA 001106/CS - RPA 0012/06/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/7/2008, haburana Ubushinjacyaha na Sgt NTAGANIRA Eugène, Civ.NTAGARA Gilbert na Civ. NDUWAYEZU Théogène

[32] Urukiko rurasanga, ingingo ya 263 y'itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe n'ingingo ya 11 y'Itegeko n° 69/2019 ryo kuwa 08/11/2019, igaragaza ko Umushingamategeko yashatse gutandukanya abantu bakoresha ibiyobyabwenge mu guhaza irari ryabyo (consommation à usage personnel) n'abantu babikwirakwiza mu bantu (drugs trafficking), urugero rw'ibihano byagenewe icyiciro cy'ababikwirakwiza kikaba cyerekana ko ari ikibazo gifite ingaruka zikomeye ku muryango nyarwanda ku buryo kidakwiye kwihanganirwa. Zimwe muri izi ngaruka, nuko ibiyobyabwenge bizahaza ubuzima bw'ababikoresha, bikenesha ababyishoramo n'imiryango yabo, ndetse iki cyaha kikaba inkomoko y'ibindi byinshi birimo gusambanya abana, ubujura, gukubita no gukomeretsa.

[33] Urukiko rurasanga Murindahabi Jean de Dieu mu gucuruza urumogi kwe, arucuruza no mu banyeshuri biga mu mashuri yisumbuye, ibi bikaba byongera ububi bw'icyaha ashinjwa kuko abangamiye imyigire n'iterambere ry'urubyiruko ashora mu biyobyabwenge, ingaruka z'icyaha ashinjwa zikaba ziremereye.

[34] Urukiko rurasanga, imanza zatanzwe ho urugero n'ubwunganizi ari izigamije kwerekana ko ubutabera buboneye ari ubwemerera umucamanza kugena igihano kiri mu rugero rw'uburemere bw'icyaha, kabone n'iyo iki gihano cyaba kiri munsi y'igiteganywa n'Itegeko. Rurasanga ikibazo kiri muri uru rubanza atari uko umucamanza yazitiwe n'ingingo ya 60 y'Itegeko n° 68/2018 ryavuzwe ngo bitume atajya munsi y'igihano gito giteganywa, ahubwo Urukiko rukaba rwarashyize mu gaciro kuba Murindahabi ari ubwa mbere yari aguye mu cyaha, nubwo yari yahisemo guhindura imvugo, rusesengura n'uburemere bw'icyaha cyo gukwirakwiza ibiyobyabwenge mu bana b'abanyeshuli, bituma rumuhanisha igifungo cy'imyaka 25 n'ihazabu y'amafaranga 20.000.000.

[35] Urukiko rurasanga, nk'uko uru Rukiko rwabitanzeho umurongo mu rubanza RPAA 00408/2020/CA rwaciye kuwa 27/06/2022 haburana Ubushinjacyaha na Niyitegeka Augustin no mu rubanza RPAA 00132/2021/CA rwaciye kuwa 15/07/2022 haburana Ubushinjacyaha na UYISENGA Théogène, Urukiko rushobora kugabanya igihano rushingiye ku ngano y'ibiyobyabwenge ushinjwa yatunze cyangwa yacuruje, mu rwego rwo guhuza igihano n'uburemere bw'icyaha (Principe de la proportionnalité de la peine à l'infraction).

[36] Urukiko rurasanga nubwo urumogi ruri mu biyobyabwenge bihambaye kandi ubicuruza akaba ahanishwa igifungo cya burundu, nyamara kandi birakwiye ko umucamanza ashyira mu gaciro uburemere bw'icyaha n'igihano gitanzwe. Rurasanga ingano y'urumogi (16 boules) Murindahabi yafatanywe itakwirengagizwa mu kugena igihano kuko, uko irushaho kuba ntoya ari nako amahirwe yo kwangiriza aba agabanutse, bityo ingaruka z'iki gikorwa zikaba zidashobora kugera ku bantu benshi, binyuranye n'uko abacuruza ibiyobyabwenge bitubutse ku mubare, batera ibyago abantu benshi.

[37] Urukiko rurasanga, hakurikijwe ingano ntoya y'ibiyobyabwenge (udupfunyika 16 tw'urumogi) Murindahabi yafatanwe acuruzaga, hakurikijwe igihe gito cy'amezi 2 yari amaze arucuruza, uru Rukiko rurasanga igifungo cy'imyaka 20 n'ihazabu ya 10.000.000 Frw ari igihano gikwiranye n'icyaha Murindahabi yakoze ndetse kikaba ari n'igihe gihagije cyatuma atekereza ku bubi bw'icyaha cyo gukwirakwiza ibiyobyabwenge. Ibi kandi Urukiko rurabishingira ku ngingo ya 49 y'Itegeko N° 68/2018 ryavuzwe haruguru, iteganya ibishingirwaho mu kugena ibihano, kimwe muri byo akaba uburemere bw 'icyaha.

III. ICYEMEZO CY'URUKIKO

[38] Rwemeje ko urubanza RPA 01357/2019/HC/KIG, rwaciwe n'Urukiko Rukuru kuwa 29/7/2020 ruhindutse ku birebana n'ibihano gusa.

[39] Rutegetse ko Murindahabi Jean de Dieu ahanishwa igifungo cy'imyaka 20 n'ihazabu y'amafaranga miliyoni icumi (10.000.000Frw) kubera icyaha cyo gucuruza ibiyobyabwenge (urumogi).

[40] Rutegetse ko Murindahabi Jean de Dieu asonerwa amagarama y'urubanza kuko yaburanye afunzwe.