# UBUSHINJACYAHA v. MUTABAZI

[Rwanda URUKIKO RW'UBUJURIRE - RPAA 00172/2021/CA (Gakwaya, P.J.) 23 Nzeri 2022]

*Amategeko agenga imanza z'inshinjabyaha – Itangwa ry'ibihano – Mu gutanga igihano, umucamanza yita ku bintu bitandukanye agamije guhana koko uwakoze icyaha, hitawe ku nyungu z'uwahohotewe, iz'uregwa iza sosiyete muri rusange, hanagendewe ku buryo icyaha cyakozwe no ku ngaruka cyateye, cyane cyane agendereye gutanga igihano gihwanye n'icyaha cyakozwe n'uburyo cyakozwe mo.*

**Incamake y'icyibazo:** Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Ubushinjacyaha bukurikiranyeho Mutabazi David icyaha cy'ubwinjiracyaha bw'ubwicanyi, busobanura ko yategeye mukuru we witwa Musirikare Jean-Pierre hanze ku marembo asohotse mu nzu, ahita amutemagura mu mutwe, maze umubyeyi wabo witwa Mukanyarwaya Felikula aje kubakiza, nawe, Mutabazi David amutemagura mu gahanga, mu musaya no kuzuru, abana bari hafi aho bavuza induru, abaturanyi baratabara. Uregwa yaburanye yemera icyaha, avuga ko yatemye mukuru we kubera ko nawe yari yamukubitiye umugore, bapfa ikibazo cy'ubutaka bari bafitanye, ko ariko atashakaga kumwica. Urukiko Rwisumbuye rwemeje ko ahamwa n'icyaha cy'ubwinjiracyaha mu bwicanyi, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). Uregwa yajuriye m'Urukiko Rukuru, Urugereko rwa Nyanza avuga ko yahanishijwe igihano kirekire kandi yaraburanye yemera icyaha, akaba asaba kugabanyirizwa igihano, ariko Urukiko Rukuru rwemeza ko ubujurire nta shingiro bufite ko urubanza yajuririye rudahindutse.

Uregwa ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire asaba kugabanyirizwa igihano. Mu iburanisha, uwajuriye yaburanye avuga ko akomeje kwemera icyaha cyo kuba yaratemye mukuru we na nyina, ko yabitewe n'uko nawe yari yaramukubitiye umugore, ari mu bitaro, bakaba bari banafitanye amakimbirane akomoka ku mitungo y'ubutaka yasigiwe na se ngo azabwubakeho, bakaba bari bamubujije kongera guhinga muri iyo sambu, akaba asaba kugabanyirizwa igihano agahanishwa igifungo cy'imyaka irindwi (7), kuko yamaze kumva ingaruka zacyo kandi akaba akicuza, atazongera kugikora ukundi, ndetse nabo yagikoreye bakaba ari bazima, barakize. Ubushinjacyaha buvuga ko impamvu uwajuriye atanga asaba ko yagabanyirizwa igihano, zirimo kuba yemera icyaha ku buryo budashidikanywaho kandi akaba ari ubwa mbere aguye mu cyaha, nta gaciro zikwiye habwa, kuko yaranzwe no kugenda yivuguruza ahindagura imvugo, ashaka guhunga ubwinjiracyaha bw'ubwicanyi yahamijwe, avuga ko icyo yakoze ari ugukubita no gukomeretsa, kandi ku rwego rwa mbere akaba yaragabanyirijwe igihano ku buryo buhagije kandi bukurikije amategeko, aho yahanishijwe igihano gito giteganyirijwe uwahamwe n'icyaha nk'icyo yakoze, ko uretse nibyo kandi umucamanza adategetswe kugabanya igihano kubera impamvu nyoroshyacyaha, igihe asanze kukigabanya bidakwiye.

**Incamake y'icyemezo:** Mu gutanga igihano, umucamanza yita ku bintu bitandukanye agamije guhana koko uwakoze icyaha, hitawe ku nyungu z'uwahohotewe, iz'uregwa iza sosiyete muri rusange, hanagendewe ku buryo icyaha cyakozwe no ku ngaruka cyateye,cyane cyane agendereye gutanga igihano gihwanye n'icyaha cyakozwe n'uburyo cyakozwe mo.

**Ubujurire nta shingiro bufite.**

**Amategeko yakoreshejwe:**

Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 21, 49, 58 na 107

**Nta manza zifashishijwe.**

# Urubanza

## I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Ubushinjacyaha bukurikiranyeho Mutabazi David icyaha cy'ubwinjiracyaha bw'ubwicanyi, busobanura ko ku wa 22/6/2019 saa kumi n'ebyiri n'igice z'umugoroba (18h30), yategeye hanze ku marembo mukuru we witwa Musirikare Jean-Pierre asohotse mu nzu, ahita amutemagura mu mutwe, maze umubyeyi wabo witwa Mukanyarwaya Felikula aje kubakiza, nawe, Mutabazi David amutemagura mu gahanga, mu musaya no kuzuru, abana bari hafi aho bavuza induru, abaturanyi baratabara, Musirikare Jean-Pierre ajyanwa kwa muganga.

[2] Mutabazi David yaburanye yemera icyaha, avuga ko yatemye mukuru we Musirikare Jean-Pierre, kubera ko nawe ku wa 19/06/2019 yari yamukubitiye umugore, bapfa ikibazo cy'ubutaka bari bafitanye, ko ariyo mpamvu nawe yamuteze agiye gucyura ihene, akamutemagura, ko ariko atashakaga kumwica.

[3] Mu rubanza RP 00518/2019/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 6/8/2019, rushingiye ku kwemera icyaha kwa Mutabazi David, ku mvugo z'abatangabuhamya bamushinja no kuri raporo ya muganga igaragaza ko Musirikare Jean-Pierre na Mukanyarwaya Felikula bari fite ibikomere ahantu hatandukanye, rwemeje ko Mutabazi David ahamwa n'icyaha cy'ubwinjiracyaha mu bwicanyi, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25).

[4] Mutabazi David ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru, Urugereko rwa Nyanza avuga ko yahanishijwe igihano kirekire kandi yaraburanye yemera icyaha, ko urukiko rutitaye ku mpamvu nyoroshyacyaha yarugaragarije, avuga ko yicuza icyaha yakoze, asaba kugabanyirizwa igihano.

[5] Mu rubanza n° RPA 00756/2019/HC/NYZ, rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 26/11/2020, rwemeje ko ubujurire bwatanzwe na Mutabazi David nta shingiro bufite, rwemeza ko urubanza yajuririye rudahindutse.

[6] Mutabazi David ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire ku wa 10/12/2020, asaba kugabanyirizwa igihano.

[7] Urubanza rwaburanishijwe ku wa 6/9/2022, Mutabazi David yunganirwa na Me Cyiza Clément, Ubushinjacyaha buhagarariwe na Mukunzi Faustin, Umushinjacyaha ku rwego rw'Igihugu.

## II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

### 1. Kumenya niba Mutabazi David yagabanyirizwa igihano

[8] Mutabazi David avuga ko akomeje kwemera icyaha cyo kuba yaratemye mukuru we na nyina, ko yabitewe n'uko nawe yari yaramukubitiye umugore, ari mu bitaro, bakaba bari banafitanye amakimbirane akomoka ku mitungo y'ubutaka yasigiwe na se ngo azabwubakeho, bakaba bari bamubujije kongera guhinga muri iyo sambu, bituma acunga mukuru we Musirikare Jean-Pierre aramutema, na nyina aje kubakiza nawe aramutema, ko abisabira imbabazi no kugabanyirizwa igihano agahanishwa igifungo cy'imyaka irindwi (7), kuko yamaze kumva ingaruka zacyo kandi akaba akicuza, atazongera kugikora ukundi, ndetse nabo yagikoreye bakaba ari bazima, barakize.

[9] Me Tugirumuremyi Raphaël na Cyiza Clément mu mwanzuro bakoze bunganira Mutabazi David, bavuga ko yakomeje gusaba kugabanyirizwa igihano kuko yemera icyaha akanagisabira imbabazi, ko ariko iyo mpamvu nyoroshyacyaha n'iyo kuba ari ubwa mbere akurikiranywe, zitigeze zitabwaho ngo agabanyirizwe igihano, bityo ko basaba Urukiko rw'Ubujurire ko mu kumuhana, rwazashingira ku ngingo ya 49 n'iya 58 z'Itegeko 68/2018 riteganya ibyaha n'ibihano muri rusange, ziteganya amahame umucamanza agenderaho igihe atanga igihano, akareba uko uwakoze icyaha yari asanzwe yitwara, n'ingaruka icyaha cyateje. Ko Mutabazi David yiyunze nabo yatemye (nyina n'umuvandimwe we) kandi bakaba barandikiye ubuyobozo bemeza ko bakize, nta kibazo bafite, ndetse bamusabira imbabazi.

[10] Bakomeza basaba uru Rukiko kuzashingira murongo watanzwe mu manza zaciwe n'Urukiko rw'Ikirenga n° RS/INCONST/SPEC 00003/2019/SC rwaciwe ku wa 4/12/2019, urubanza no RS/INCONST/SPEC 00005/2020/CS rwaciwe ku wa 12, Gashyantare 2020 hamwe n'urubanza n° RPAA 00032/2019/CA rwaciwe n'Urukiko rw'Ubujurire, aho muri izo manza, zagaragaje ko nta cyabuza Umucamanza kugabanya igihano ngo ajye munsi y'igihano gito cyateganyijwe n'itegeko, cyane cyane iyo intera iri hagati y'igihano gito n'ikinini ari ntoya. Ibikubiye mu mwanzuro ni nabyo Me Cyiza Clément yagarutseho yunganira Mutabazi David imbere y'Urukiko.

[11] Ubushinjacyaha buvuga ko impamvu Mutabazi David n'abamwunganira batanga basaba ko yagabanyirizwa igihano, zirimo kuba yemera icyaha ku buryo budashidikanywaho kandi akaba ari ubwa mbere aguye mu cyaha, nta gaciro zikwiye habwa, kuko yaranzwe no kugenda yivuguruza ahindagura imvugo, ashaka guhunga ubwinjiracyaha bw'ubwicanyi yahamijwe, avuga ko icyo yakoze ari ugukubita no gukomeretsa, kandi ku rwego rwa mbere akaba yaragabanyirijwe igihano ku buryo buhagije kandi bukurikije amategeko, aho yahanishijwe igihano gito giteganyirijwe uwahamwe n'icyaha nk'icyo yakoze, ko uretse nibyo kandi umucamanza adategetswe kugabanya igihano kubera impamvu nyoroshyacyaha, igihe asanze kukigabanya bidakwiye, ko uwo ari nawo murongo watanzwe mu rubanza no RPA 0282/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 12/3/2010, aho rwemeje ko kugabanya igihano cyangwa kutakigabanyiriza umuburanyi wemeye icyaha, atari itegeko ku mucamanza, kabone n'iyo yasanga uko kwemera kuzuye. Naho ku bijyanye n'imanza abunganira Mutabazi David basaba uru Rukiko gushingiraho, buvuga ko zidasimbura itegeko.

## UKO URUKIKO RUBIBONA

[12] Ingingo ya 107 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko "Umuntu wica undi abishaka, aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igihano cy'igifungo cya burundu".

[13] Ingingo ya 21 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko "Ubwinjiracyaha buhanirwa iyo umugambi wo gukora icyaha wagaragajwe n'igikorwa kimwe cyangwa byinshi biboneka, bidashidikanywa by'intangiriro y'icyaha biganisha ku ikorwa ryacyo, nyuma bigahagarikwa, bikabuzwa kugera ku cyifuzo cyangwa bikazitirwa n'impamvu zidakomoka ku bushake bwa nyir'ugukora icyaha. Ku cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha buhanishwa igihano cy'igifungo kingana n'imyaka makumyabiri n'itanu (25)".

[14] Ingingo ya 49 y'iryo Tegeko 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 (…)''.

[15] 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''.

[16] Nk'uko bigaragara mu gace ka karindwi (7) n'aka munani (8) tw'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Nyanza, rushingiye ku ngingo ya 21 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye buhanishwa kimwe cya kabiri (1/2) cy'igihano giteganyirijwe icyo cyaha, ku cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha bugahanishwa igihano cy'igifungo kingana n'imyaka makumyabiri n'itanu (25), kandi na Mutabazi David akaba aricyo yahanishijwe kuko yahamijwe ubwinjiracyaha bw'ubwicanyi, ubusanzwe ubwicanyi buhanishwa igihano cy'igifungo cya burundu, ko rero rusanga atagomba kongera kugabanyirizwa igihano, kubera ko igihano yahawe aricyo gito gishoboka, ko kandi kuba yaratemye abantu babiri nabyo ari impamvu nkomezacyaha ituma atagomba kugabanyirizwa igihano.

[17] Dosiye y'urubanza igaragaza ko Mutabazi David yabajijwe mu Bugenzacyaha ku wa 6/7/2019, amenyeshwa ko akurikiranyweho ubwinjiracyaha mu cyaha cy'ubwicanyi, avuga ko acyemera, asobanura ko yakuye igitiyo iwe mu rugo, araza ategera mukuru we Musirikare Jean-Pierre (mukuru we) ku marembo, asohotse akimukubita mu musaya arakomereka, arongera agikubita Mukanyarwaya Felikula (nyina), ku zuru, hejuru y'ijisho no ku itama nawe arakomereka, bitewe n'uko bashakaga kumwimura mu kibanza ise yamusigiye.

[18] Dosiye na none igaragaza amafoto ya Musirikare Jean-Pierre yerekana uko yari ameze nyuma yo gutemwa na Mutabazi David, avirirana amaraso mu mazuru, hamwe n'ifoto ya Mukanyarwaya Felikula afite ibikomere bitandukanye bidoze mu maso, bigaragaza ko abo bombi batemwe bikomeye kandi inshuro nyinshi.

[19] Muri dosiye hari raporo yakozwe na muganga yo ku wa 10/7/2019 ya Musirikare Jean-Pierre, igaragaza ko yageze mu bitaro bya CHUK yoherejwe n'ibitaro bya Remera Rukoma, igaragaza imvune y'igufwa riri ku gice cy'umutwe, n'ubumuga bwa 30% yagombaga kumarana igihe cy'amezi atatu, hakaba naraporo ya ya muganga ya Mukanyarwaya Felikula ( nyina wa Mutabazi David), yakozwe n'ibitaro bya Kacyiru ku wa 25/6/2019, igaragaza ko yari afite ibisebe byinshi mu maso bidoze, n'ikindi gisebe gitoya ku zuru hamwe n'ijisho ritukura, ashobora kumarana ibyumweru bibiri.

[20] Muri Dosiye hagaragara inyandiko yo ku wa 10/11/2021, yashyizwe muri system IECMS na Mutabazi David ku wa 14/7/2020, ayita umwanzuro w'inyongera, avuga ko ari ikimenyetso gihamya ko yasabye imbabazi, kuko iyo nyandiko yanditswe n'umuryango we ugizwe na Mukanyarwaya Félicule hamwe na Musirikare, bavuga ko batekereje bagasanga bagomba kubabarira, umuvandimwe, umwana wabo (Mutabazi David) ufungiye muri Gereza ya Muhanga, ku byaha yabakoreye. Iyo nyandiko kaba iriho imikono itandukanye y'abagize uwo muryango n'abayozobozi b'inzego z'ibanze batandukanye, iteyeho kashe y'Akagali ka Kigese.

[21] Nk'uko bigaragara mu mwanzuro w'ubujurire bwa Mutabazi David, hamwe n'abamwunganira, avuga ko yaburanye yemera icyaha ndetse akaba ari n'ubwa mbere akurikiranywe n'inkiko ariko akaba ataragabanyirijwe igihano, ko akomeje gutakamabira uru rukiko arusaba kwemeza ko ukwemera icyaha kwe kuzuye akagabanayirizwa igihano.

[22] Isesengura ry'ingingo ya 58 n'iya 49 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.

[23] Urukiko rw'Ubujurire rurasanga rero, Urukiko Rukuru, Urugereko rwa Nyanza rutaragombaga kwanga kugabanyiriza Mutabazi David igihano rushingiye ku kuba Urukiko rwaciye urubanza ku rwego rwa mbere rwaramuhaye igihano gito giteganywa n'itegeko, ahubwo rwaragombaga kugaragaza ko mu bushishozi bwarwo, rusanga icyo gihano yahawe gikwiranye n'icyaha yakoze.

[24] Urukiko rw'Ubujurire rurasanga n'ubwo Mutabazi David avuga ko yemera icyaha kandi akaba ari ubwa mbere akurikiranywe n'inkiko, ariko ibyo ashingiraho nk'impamvu nyoroshyacyaha, bidakwiye gushingirwaho, kuko icyaha yakoze yagikoranye ubugome bukabije, atema umuvandimwe we Musirikare Jean-Pierre, kandi amutema inshuro nyinshi nk'uko bigaragazwa n'ifoto y'uburyo yari ameze nyuma yo gutemwa, byongeye amutema ku gice cyo mu mutwe (mu cyico), hakaba hari na raporo ya muganga yerekana ubumuga yagize bwa 30%, yamaranye amezi atatu, Mutabazi David kandi akaba yaranatemye umubyeyi we nyina umubyara, wari uje abatabaye, amutema inshuro nyishi, nk'uko nawe ifoto ibigaragaza, ndetse na raporo ya muganga, kandi amutema ku gice cy'umutwe, ibi bigaragaza ko Mutabazi David yari afite umugambi mubi wo kwica, byahagaritswe n'impamvu nawe atashakaga, kuko abana bari aho babonye ibyo arimo akora bagatabaza, abantu bagahururra, bituma ahunga atarangije ibikorwa bye bibi.

[25] Ibivuzwe haruguru kandi bigaragara ko ari umugambi yari yategute, kuko nk'uko abyivugira yagiye kuzana igitiyo iwe mu rugo, araza ategerereza ku marembo ko mukuru we asohoka, aramucunga kugeza aje, ahita akimukubita ahantu mu kico, ndetse na nyina abigenza uko. Ibi rero bisesenguriwe hamwe n'ingingo ya 58 n'iya 49 z'Itegeko no 68/2018 ryo ku wa 30/8/2018, riteganya ibyaha n'ibihano, nk'uko zagarutsweho haruguru, aho umucamanza mu gutanga igihano yita ku bintu bitandukanye agamije guhana koko uwakoze icyaha, hitawe ku nyungu z'uwahohotewe, iz'uregwa iza sosiyete muri rusange, hanagendewe ku buryo icyaha cyakozwe no ku ngaruka cyateye,cyane cyane agendereye gutanga igihano gihwanye n'icyaha cyakozwe, bigaragaza ko igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) Mutabazi David yahanishijwe gikwiranye n'icyaha yakoze, n'uburyo yagikozemo.

[26] Ku bijyanye n'inyandiko itanga imbabazi yanditswe nabahohotewe bo mu muryango wa Mutabazi David, Urukiko rw'Ubujurre rurasanga itashingirwaho nk'impamvu ituma agabanyirizwa igihano, kuko icyaha yakoze kitabakorewe abo bonyine nk'abantu ku giti cyabo, ahubwo ari icyaha cyanakorewe sosiyete muri rusange, kandi nk'uko byasobanuwe haruguru igihano yahawe kikaba gikwiranye n'uburemere bw'ibikorwa yakoze.

[27] Kubera izo mpamvu zose zasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga ubujurire bwa Mutabazi David bushingiye ku gusaba kugabanyirizwa igihano nta shingiro bufite, urubanza ajuririra rukaba rudahindutse.

## III. ICYEMEZO CY'URUKIKO

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

[29] Rwemeje ko urubanza n° RPA 00756/2019/HC/NYZ rwaciwe ku wa 26/11/2020 n'Urukiko Rukuru, Urugereko rwa Nyanza, rudahindutse.

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