UBUSHINJACYAHA v. MUSONERA

[Rwanda URUKIKO RW'UBUJURIRE - RPAA 00154/2021/CA (Gakwaya, P. J.) 23 Nzeri 2022]

Amategeko agenga imanza z'inshinjabyaha – Ibimenyetso mumanza n'itangwa ryabyo – Guhamagara umutangabuhamya m'Urukiko – N'ubwo Urukiko rushobora gutumira umutangabuhamya wasabwe n'ababuranyi mu gihe rusanga ubuhamya bwe bushobora kugaragaza ukuri kuko bukwiye kandi bufite ireme, no gusuzuma mu bushishozi bwarwo niba ari ngombwa kumva umutangabuhamya usabwe n'umuburanyi, rubikora rwubahiriza uburenganzira bw'uregwa bwo kwiregura (respect des droits de la défense), uregwa afite mbere na mbere ishingano yo kugaragariza Urukiko ku buryo bwumvikana (manière circonstanciée) ko umutangabuhamya uvuga akenewe cyane kugira ngo abone ubutabera.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe, Ubushinjacyaha bukurikiranyeho Musonera André (Umukuru w'Umudugudu), Nzabandora Innocent alias Duri, Tuyishime Ezéchiel alias Kadogo na Munyentwari Védaste alias Maître, icyaha cyo gukubita no gukomeretsa byateye urupfu. Busobanura ko abantu bivugwa ko bari ku irondo babonye uwitwa Niyonshuti Vincent agendagenda, bahita bamufata batangira kumukubita, nyuma bahamagara Komanda wa police station ya Gasaka aza kuhagera atwara wa muntu (Niyonshuti Vincent) byaragaragaga ko yakubiswe bikabije kuko yari anafite ibikomera umubiri wose, bukeye apfira muri kasho ya police, hafatwa abaregwa 4 bavuzwe haruguru batangira gukurikiranwa. Uretse Tuyishime Ezéchiel alias Kadogo waburanye yemera icyaha, abandi uko ari batatu bose baburanye bahakana icyaha, maze Urukiko rwemeza ko abaregwa bose bahamwa n'icyaha cyo gukubita no gukomeretsa umuntu ku bushake bigatera urupfu, rubahanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw) kuri buri wese. Abaregwa bajuriye imikirize y'urubanza mu Rukiko Rukuru, Urugereko rwa Nyanza. Kuri Munyentwari Védaste avuga ko yemera icyaha asaba imbabazi no kugabanyirizwa ibihano. Kuri Musonera André avuga ko abatangabuhamya bamushinja bamubeshyera kuko iyo biba atari ibinyoma bari kuba barabibwiye *commandant* wa *police* akihagera kuko yarabibajije. Kuri Tuyishime Ezéchiel na Nzabandora Innocent bavuga ko bemera icyaha bakagisabira imbabazi, bagasaba kugabanyirizwa ibihano, urukiko rwemeza ko ubujurire bwabo nta shingiro bufite, ko imikirize y'urubanza bajuririye idahindutse.

Musonera André ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire avuga ko Urukiko Rukuru, Urugereko rwa Nyanza rwamuhamije icyaha hashingiwe ku buhamya bw'abareganwa hamwe nawe gusa, ndetse ko inkiko zombi nta bimenyetso zishakiye bitagezweho n'Ubushinjacyaha. Avuga kandi ko urwo Rukiko rutarabajije abatangabuhamya yarushyikirije bamushinjura aribo Gahonzire Damascène, Sibomana Ernest, Mbonimana Vincent, Niyonsenga Josué na Hatangimana Védaste. Mu iburanisha, Ubushinjacyaha buvuga ko ibyo Musonera André avuga ko abatangabuhamya babajijwe babogamye, nta gaciro byahabwa kuko atagaragaza icyo apfa nabo cyane cyane ko abatanze ubuhamya ari abari aho icyaha cyabereye, abandi bakaba ari abaregwa hamwe nawe bavuga ibintu uko byagenze, barimo n'uwemera icyaha. Buvuga kandi ko kuba Urukiko Rukuru, Urugereko rwa Nyanza rwarabyemeye nk'ikimenyetso kidashidikanywaho, Musonera André ariwe ufite inshingano zo kugaragaza ikimenyetso kivuguruza ibyemejwe n'urwo Rukiko.

Incamake y'icyemezo: N'ubwo Urukiko rushobora gutumira umutangabuhamya wasabwe n'ababuranyi mu gihe rusanga ubuhamya bwe bushobora kugaragaza ukuri kuko bukwiye kandi

bufite ireme, no gusuzuma mu bushishozi bwarwo niba ari ngombwa kumva umutangabuhamya usabwe n'umuburanyi, rubikora rwubahiriza uburenganzira bw'uregwa bwo kwiregura (respect des droits de la défense), uregwa afite mbere na mbere ishingano yo kugaragariza Urukiko ku buryo bwumvikana (manière circonstanciée) ko umutangabuhamya uvuga akenewe cyane kugira ngo abone ubutabera.

Ubujurire bwatanzwe na Musonera André nta shingiro bufite.

Amategeko yakoreshejwe:
Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 66.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe, Ubushinjacyaha bukurikiranyeho Musonera André (Umukuru w'Umudugudu), Nzabandora Innocent alias Duri, Tuyishime Ezéchiel alias Kadogo na Munyentwari Védaste alias Maître, icyaha cyo gukubita no gukomeretsa byateye urupfu. Busobanura ko ku wa 12/3/2019, mu gihe cya saa mbiri z'ijoro (20h00), mu Mudugudu wa Murambi, Akagali ka Remera, Umurenge wa Gasaka, Akarere ka Nyamagabe abantu bivugwa ko bari ku irondo babonye uwitwa Niyonshuti Vincent agendagenda aho, bahita bamufata batangira kumukubita, ari nabwo bahamagaye Umukuru w'Umudugudu witwa Musonera André, nyuma na Komanda wa police station ya Gasaka aza kuhagera atwara wa muntu (Niyonshuti Vincent) byaragaragaga ko yakubiswe bikabije kuko yari anafite ibikomera umubiri wose, bukeye ku wa 13/3/2019 apfira muri kasho ya police, hafatwa abaregwa 4 bavuzwe haruguru batangira gukurikiranwa, bakekwaho kuba aribo bamukubise bikamuviramo urupfu.

[2] Uretse Tuyishime Ezéchiel alias Kadogo waburanye yemera icyaha, abandi uko ari batatu bose baburanye bahakana icyaha, bavuga ko abatangabuhamya babashinja bababeshyera, kubera akagambane babagiriye.

[3] Mu rubanza n° RP 00121/2019/TGI/NYBE rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 27/6/2019, rushingiye ku kuba abaregwa hagati yabo bashinjyanya, Tuyishime Ezéchiel alias Kadogo ubwe akaba yemera ko yakubise nyakwigendera inkoni ebyiri (2) mu bitugu, ndetse akanashinja bagenzi be barimo Mungwarakarama Evariste, Nshimiyimana Boniface, Munyentwari Védaste alias Maître, Nzabandora Innocent alias Duri na Habyarimana Innocent, kuba nabo baragize uruhare mu gukubita Niyonshuti Vincent, naho kuri Musonera André, rugasanga n'ubwo ahakana icyaha, ariko agishinjwa na Nzabandora Innocent alias Duri baregwa hamwe, kandi ubwo buhamya bukaba bwuzuza ubwa Kabatesi Jeannette, Habyarimana Innocent, Mukamana Marthe, Mukandori Clémentine, Nsabira Joseph, bose bemeje ko mu bakubise Niyonshuti Vincent harimo na Musonera André, rwemeje ko abaregwa bose bahamwa n'icyaha cyo gukubita no gukomeretsa umuntu ku bushake bigatera urupfu, rubahanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw) kuri buri wese.

[4] Musonera André, Tuyishime Ezéchiel alias Kadogo, Nzabandora Innocent alias Duri na Munyentwali Védaste alias Maître bajuririye imikirize y'urubanza mu Rukiko Rukuru, Urugereko rwa Nyanza. Kuri Munyentwari Védaste avuga ko yemera icyaha asaba imbabazi no kugabanyirizwa ibihano. Kuri Musonera André avuga ko abatangabuhamya bamushinja bamubeshyera kuko iyo biba atari ibinyoma bari kuba barabibwiye commandant wa police akihagera kuko yarabibajije. Kuri Tuyishime Ezéchiel na Nzabandora Innocent bavuga ko bemera icyaha bakagisabira imbabazi, bagasaba kugabanyirizwa ibihano.

[5] Mu rubanza n° RPA 00698/2019/HC/NYZ, Urukiko Rukuru, Urugereko rwa Nyanza 20/10/2020 rwemeje ko ubujurire bwatanzwe na Musonera André, Tuyishime Ezéchiel alias Kadogo, Nzabandora Innocent alias Duri na Munyentwali Védaste alias Maître nta shingiro bufite, rwemeza ko imikirize y'urubanza bajuririye idahindutse.

[6] Musonera André ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire ku wa 9/11/2020, avuga ko Urukiko Rukuru, Urugereko rwa Nyanza rwamuhamije icyaha hashingiwe ku buhamya bw'abareganwa hamwe nawe gusa, ndetse ko inkiko zombi nta bimenyetso zishakiye bitagezweho n'Ubushinjacyaha. Avuga kandi ko urwo Rukiko rutarabajije abatangabuhamya yarushyikirije bamushinjura aribo Gahonzire Damascène, Sibomana Ernest, Mbonimana Vincent, Niyonsenga Josué na Hatangimana Védaste.

[7] Urubanza rwaburanishijwe ku wa 6/9/2022, Musonera André yunganirwa na Me Me Ntazika Néhémie, Ubushinjacyaha buhagarariwe na Mukunzi Faustin, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba Urukiko Rukuru, Urugereko rwa Nyanza rwarakoze amakosa yo gushingira ku byavuzwe na Nzabandora Innocent na Munyentwari Védaste no ku buhamya bw'abatangabuhamya bamushinja icyaha baregwa, rwirengagiza imvugo za Tuyishime Ezéchiel uwamushinjura

[8] Musonera André avuga ko Urukiko Rukuru, Urugereko rwa Nyanza rwamuhamije icyaha aregwa rushingiye ku byavuzwe n'abaregenwa hamwe nawe, nyamara ibyo bimenyetso birimo gushidikanya, ariyo mpamvu asaba uru Rukiko kumugira umwere. Asobanura ko urwo Rukiko rwashingiye ku buhamya bwa Nzabandora Innocent alias Duri na Munyentwari Védaste alias Maître, rwirengagiza ko Tuyishime Ezéchiel, nawe bareganwa hamwe, wavuguruje ibyo abo babiri bavuze, akavuga ko we atari mu bagize uruhare ku cyaha baregwa, ko Tuyishime Ezéchiel yasobanuye ko ibivugwa na Nzabandora Innocent alias Duri na Munyentwari Védaste alias Maître ari ibyo bagambaniye muri gereza.

[9] Musonera André akomeza avuga ko urwo Rukiko rwashingiye kandi ku buhamya bwa Mungwarakarama Evariste, Kabatesi Jeannette na Mukamana Marthe, nyamara hatarimo ukuri. Asobanura ko ibyavuzwe na Mungwarakarama Evariste birimo urujijo, mu gihe Kabatesi Jeannette na Mukamana Marthe bavuze ibyo batabonye kuko hari nijoro mu mwijima, bari mu ngo zabo, ko batabashije kugera aho nyakwigendera yakubitiwe. Asobanura kandi ko umugabo wa Kabatesi Jeannette, ariwe Habyarimana Innocent, yari mu ikipe yakoze irondo ryafashe nyakwigendera, ariko nta hantu Kabatesi Jeannette amushinja, ahubwo yagerageje kumushinjura, ko ndetse asanzwe afite icyo apfa n'uyu mutangabuhamya kuko yamwimye imirima yo guhinga. Ku birebana na Mukamana Marthe, bakaba bapfa ko nk'umwe mu bagize Komite y'Umudugudu, yamubujije kubaka mu muhanda, ko rero nta kintu kizima yamuvugaho.

[10] Me Ntazika Néhémie, yunganira Musonera André, avuga ko uyu yahamijwe icyaha atakoze kuko mu gufuta ibyemezo byazo, Inkiko zabanje zashingiye ku mvugo za Tuyishime Ezéchiel alias Kadogo wemera icyaha, nyamara uyu yaramushinjuye aho kumushinja. Asobanura ahubwo ko Musonera André ariwe wabuzaga abareganwa hamwe nawe gukubita nyakwigendera.

[11] Me Ntakiza Néhémie avuga kandi ko Urukiko Rukuru, Urugereko rwa Nyanza rwashingiye ku mvugo z'abari kumwe na Musonera André ku irondo, nyamara imvugo zabo zishidikanywaho kuko zivugurazanya, ko mu Itegeko ry'ibimenyetso hadashingirwa ku mvugo zimwe mu zavuzwe, ngo izindi bazihorere. Asobanura ko mu Rukiko Rukuru, Tuyishime Ezéchiel yavuze ko Mungwarakarama Evariste, Nzabandora Innocent alias Duri na Munyentwali Védaste aribo bakubise nyakwigendera, ko atigize avuga Musonera André, ko mu by'ukuri, yaje yatabajwe, nyuma abandi bakomeza gukubita nyakwigendera, we ababuza kongera kumukubita.

[12] Ubushinjacyaha buvuga ko ibyo Musonera André avuga ko abatangabuhamya babajijwe babogamye, nta gaciro byahabwa kuko atagaragaza icyo apfa nabo cyane cyane ko abatanze ubuhamya ari abari aho icyaha cyabereye, abandi bakaba ari abaregwa hamwe nawe bavuga ibintu uko byagenze, barimo n'uwemera icyaha. Buvuga kandi ko kuba Urukiko Rukuru, Urugereko rwa Nyanza rwarabyemeye nk'ikimenyetso kidashidikanywaho, Musonera André ariwe ufite inshingano zo kugaragaza ikimenyetso kivuguruza ibyemejwe n'urwo Rukiko, hashingiwe ku ngingo ya 107, igika cya gatatu (3), y'Itegeko n° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 65 y'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko '' Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira''.

[14] Ingingo ya 119 y'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko '' Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa''.

[15] Ibivugwa mu ngingo ya 119 yavuzwe haruguru byumvikanisha ko mu manza nshinjabyaha, ibimenyetso bitangwa n'ababuranyi mu bwisanzure bwabo, icya ngombwa ni uko babijyaho impaka, ko Urukiko arirwo rusuzuma niba ibyo bimenyetso byabonetse mu buryo bukurikije amategeko kugira ngo byemerwe kandi ko ari byo.

[16] Nk'uko byagaragajwe haruguru, Musonera André anenga urubanza rwajuririwe ku mpamvu y'uko Urukiko Rukuru, Urugereko rwa Nyanza rwahamije abaregwa icyaha muri uru rubanza, rushingiye ku mvugo zabo, cyane cyane iza Nzabandora Innocent alias Duri, Munyentwari Védaste alias Maître na Tuyishime Ezéchiel alias Kadogo kandi zivuguruzanya, kuko abo babiri ba mbere bamushinja mu gihe Tuyishime Ezéchiel amushinjura. Anenga kandi urwo Rukiko kuba rwarashingiye ku buhamya bwa Mungwarakarama Evariste, Kabatesi Jeannette na Mukamana Marthe, nyamara burimo urujijo no kutavugisha ukuri.

[17] Mu gace ka cumi na kamwe (11) k'urubanza rujuririrwa bigaragara ko mu kwemeza ko Musonera André afite uruhare ku cyaha cyakorewe nyakwigendera Niyonshuti Vincent, Urukiko Rukuru, Urugereko rwa Nyanza rwasobanuye ko abaregwa hamwe nawe aribo Nzabandora Innocent alias Duri, Munyentwari Védaste alias Maître n'abatangabuhamya Mungwarakarama Evariste, Habyarimana Innocent, Mukamana Marthe, Mukandoli Clémentine, Nsabira Joseph na Kabatesi Jeannette bamushinja ko nawe yakubise kuri nyakwigendera.

[18] Inyandiko-mvugo ya Mungwarakarama Evariste mu Bugenzacyaha igaragaza ko yasobanuye ko we, Boniface na Munyentwari Védaste bageze imbere y'urwibutso bari kumwe na nyakwigendera, bahahurira n'umukuru w'Umudugudu, bamwereka nyakwigendera, ahita avuga ko aho imbere y'urwibutso hari amatara na caméra, amumanura hepfo gato munsi y'inzu aho Kayitesi atuye, ari kumwe na Munyentwali Védaste alias Maître, baramusaka bamusangana amafaranga magana abiri na mirongo itanu (250 Frw) gusa, nibwo uwitwa Nyirahabimana Madéleine yahise amanukana inkoni, batangira kumukubita bamubaza iwabo, nyuma ngo haje kuza na Tuyishime Ezéchiel alias Kadogo na Nzabandora Innocent alias Duri, bose bakomeza kumukubita bamwita igisambo, ko bamaze kubona anegekaye aribwo Musonera André yahamagaye Exécutif y'Akagali amubwira ko bafashe umuntu utazwi mu Mudugudu, Exécutif y'Akagali amubwira ko agiye kumubwirira Commandant wa polisi, ko Musonera André yasabye abitwa Urinzwenimana Ezila, Tuyishime Ezéchiel alias Kadogo, Nzabandora Innocent alias Duri na Habyarimana Innocent ko bafata inkoni bakavuga ko bari ku irondo, barabikora koko, ko ubwo commandant wa polisi yahageraga yababajije impamvu bakubise uwo muntu, umukuru w'Umudugudu Musonera André amusubiza ko ashakaga kubacika, bamwirukaho, yitura mu mukingo, ubwo polisi ihita imutwara gutyo.

[19] Dosiye y'urubanza igaragaza inyandiko-mvugo ya Habyarimana Innocent abazwa mu Bugenzacyaha ku wa 14/3/2019, yavuze ko yageze aho nyakwigendera yakubitirwaga, avuye gukama inka, ko yageze mu rugo, agasanga umugore we arimo gutabaza, abwira umukuru w'Umudugudu Musonera André n'abandi bari kumwe barimo n'uwitwa Maître (Munyentwari Védaste) ngo bareke kwicira umuntu hafi y'urugo rwe, ko uwitwa Mungwarakarama Evariste na Boniface aribo bari bafatiye uwo muntu mu nzira yambaye imyenda icitse, bamubajije ibyangombwa arabibura, bahita bahamagara umukuru w'Umudugudu, arababwira ngo nibamuzane bahurire imbere y'Urwibutso, ntabacike, bahamugejeje, nibwo yatangiye kumukubita inkoni z'imikongoti mu bitugu no mu mbavu, aramubwira ngo ni ahaguruke bagende, ahagurutse ahita amukubita umutego yitura hasi amukandagira mu gatuza, arataka, Maître nawe afatanya n'umukuru w'Umudugudu kumukubita inkoni baragiza inka ku maguru, babonye amaze kuba intere bahamagara commandant, babwira uwo muntu ngo yisige ibitaka aho yakomeretse, baramuzakana bamwicaza ku irembo ryo kwa Vincent, police ihageze ije kumutwara, ibabajije impamvu uwo muntu bamugize batyo, basubiza ko yahuye n'irondo akiruka akitura hasi. Avuga ko ibivugwa n'umukuru w'Umudugudu ko nawe (Habyarimana Innocent) yari ku irondo ari ukumubeshyera, kuko we arara irondo ku cyumweru, ko ahubwo abonye police igiye kuza aribwo yababwiye ngo nibafate imikongoto, bavuge ko basanze uwo muntu aho ngaho ari uko yabaye, ko ibindi bivugwa n'umukuru w'Umudugudu ari ibyo yahimbye amaze kubona uwo muntu anegekaye.

[20] Dosiye y'urubanza na none igaragaza inyandiko-mvugo ya Nsabira Joseph, abazwa mu Bugenzacyaha ku wa 15/3/2019, yavuze ko yabyukijwe n'urusaku rw'abakubitaga umwana w'umusore n'ugutaka k'uwo mwana wakubitwaga n'abantu batandukanye barimo n'umukuru w'Umudugudu Musonera André, akaba yari yafashwe na Evariste, Boniface na Munyentwari bari baraye irondo, bamusabye ibyangombwa, abibuze, baramuzana bamushyikiriza uwo mukuru w'Umudugudu mu kabari, hari na nyiri ako kabari witwa Madéleine, wari aho uwo musore

yakubitirwaga, ko we ibyo yabirebaga ahagaze mu mbuga iwe, aza kuzamuka ari uko abonye police ije, abona bamusunika, yazahaye adashobora kwigenza, yumva abaturage bavuga ko yakubiswe na Musonera André afatanije na Innocent bahimba Butugu na Kadogo.

[21] Dosiye igaragaza inyandiko-mvugo ya Mukandori Clémentine, abazwa mu Bugenzacyaha ku wa 15/3/2019, bamubajije ku bijyanye n'amakuru avugwa ko hari umuntu wakubitiwe imbere y'inzu ye, asubiza ko ari byo, asobanura ko yakubiswe n'abantu benshi, ariko ko ababitangiye yabonye ari Musonera André na Maître. Asobanura ko yari mu nzu aryamye, yumva abantu basakuriza imbere y'inzu, bavuga ko bafashe igisambo, arabyuka ajya kubegera, acanye itoroshi ya telefone, ahasanga Musonera André, Munyentwari alias Maître na Innocent, bambuye uwo muntu imyenda bari kumusaka, batangira kumukubita, Kabatesi avuza induru, haza n'abandi benshi baboneraho kumukubita, Musonera André yumvise induru ibaye nyinshi, ahamagara umuntu kuri telefone, nibwo bahise bamuzamura bajya kumwicaza ruguru y'umuhanda, ari naho police yaje imusanga. Asoza avuga ko uwo muntu akubitwa, nta rondo yabonaga, ko atazi niba ryaratangiye gukorwa.

[22] Dosiye y'urubanza igaragaza inyandiko-mvugo ya Kabatesi Jeannette, abazwa mu Bugenzacyaha ku wa 15/3/2019, yavuze ko yari mu gikoni, abona abantu ku muhanda, arazamuka arahagera, asanga hari umwana bicaje hasi, afitwe n'umukuru w'Umudugudu Musonera André, abwira abari bamumuzaniye aribo Bizimungu na Boniface, ngo nibaze bamusake, bamusubiza ko bo bamumuzaniye ngo amucumbikire, Musonera André aramumanukana amujyana munsi y'umukingo, amwambura ubusa, amusangana ibiceri 250 Frw, uwitwa Madéleine amanukana inkoni we n'uwo mukuru w'Umudugudu batangira kumukubita, bamubaza uko yitwa, naho aturutse, ko Musonera André yasabye impapuro n'ikaramu ngo yandike ibyo uwo mwana avuga, umwana akavuga, yagera aho ahagaritse kuvuga, akamukubita, Madéleine nawe akamukubita ku maguru ngo nibwo avuga, nyuma haza uwitwa Kadogo afite inkoni aciye mu ishyamba nawe aramukubita, Musonera André aramuzamukana amwegeka ku rurabo munsi yo kwa Kibare. Yavuze kandi ko umugabo we Habyarimana Innocent yaje kuza nyuma avuye gukama, bamaze kumukubita, abaza umukuru w'Umudugudu impamvu babyimbishije umuntu gutyo, nyuma haza police kumutwara, iravuga ngo ubundi ko mwamurangije mwaduhamagariye iki, Musonera André arasubiza ngo yaguye munsi y'umukingo. Yavuze na none ko abamukubise ari Musonera André, Madéleine, Munyentwari, Kadogo, Mukandori (wabamurukiraga) na Innocent alias Duri, bamukubitira inyuma y'inzu atuyemo (Kabatesi Jeannette), munsi y'umukingo, hari abitwa Marthe, Charles na Ngoga n'abandi benshi atazi amazina. Yasoje avuga ko yumvise bavuga ko uwo muntu yakubiswe n'irindo kandi nta riheruka, ndetse bikaba byarabaye ritaranatangira.

[23] Inyandiko-mvugo yo ku wa 15/3/2019 ya Mukamana Marthe mu Bugenzacyaha igaragaza ko yasobanuye ko yari ari mu rugo iwe, akumva Kayitesi (Kabatesi Jeannette) avuza induru, avuga ati: ''ni mwica uwo muntu muramuzira'', ko yasohotse akumva hepfo y'inzu kwa Kayitesi (Kabatesi Jeannette) niho bari gukubitira Niyonshuti Vincent, ariko kubera hari mu mwijima ntiyabasha kubona abari bari kumukubita, nyuma birangiye nibwo yabonye azamuwe n'abitwa Munyentwali Védaste alias Maître, Musonera André, Tuyishime Ezéchiel alias Kadogo na Nyirahabimana Madéleine, bigaragara ko aribo bari bari kumubitira aho hepfo, ko nyuma polisi yaje kumujyana, babajije impamvu bamukubise cyane bakabona kubahamagara, umukuru w'Umudugudu abasubiza ko yituye mu mukingo ashaka kubacika. Yavuze kandi ko icyo gihe nta rondo yigeze abona aho.

[24] Inyandiko-mvugo yo ku wa 14/3/2019 ya Tuyishime Ezéchiel mu Bugenzacyaha igaragaza ko yavuze ko atemera icyaha aregwa, ko ibirebana no gukubita Niyonshuti Vincent bigomba kubazwa Umuyobozi w'Umudugudu Musonera kuko ariwe wamwakiriye. Yasobanuye kandi ko

yari mu rugo, yumva abantu bari kuvuga ko bafashe igisambo, ajya kureba, ko yari kumwe n'abafashe uwo muntu, bashatse Umuyobozi w'Umudugudu, bamuha uwo muntu ari muzima, kuko Boniface, Valérie na Nshimiye bamuzanye atarakubitwa, uyu yahise avuga ko aho bahagaze hari caméra kuko hari iruhande rw'urwibutso, amumanura hepfo ahatagaragara munsi y'umukingo, bongeye kuzamura uwo muntu yakubiswe yanegekaye, ari naho polisi yaje kumukura. Yasobanuye na none ko kuba uwo muntu yaramanuwe munsi y'uwo mukingo n'Umuyobozi w'Umudugudu wa Murambi n'abandi bari kumwe atabashije kumenya, ibyo kumukubita byose ariwe wabisobanura.

[25] Mu Bushinjacyaha, ku wa 19/3/2019, Tuyishime Ezéchiel yavuze ko atemera icyaha aregwa, ko ahubwo Niyonshuti Vincent yakubiswe n'Umukuru w'Umudugudu Musonera André n'uwo bita Maître na Madéleine, ko igihe bamukubitaga yabirebaga, ko yamukubise akoresheje inkoni aherekesha inka.

[26] Inyandiko-mvugo yo ku wa 3/4/2019 ya Munyentwali Védaste alias Maître mu Bugenzacyaha, igaragaza ko yasobanuye ko nyakwigendera amaze gushyikirizwa Umukuru w'Umudugudu, uyu yarabanje amukubita utunyafu nka dutatu, aramumanukana amujyana hepfo gato mu mwijima, iruhande rwo kwa Kabatesi, ari naho yamukubitiye hari abantu benshi.

[27] Mu Bugenzacyaha ku wa 14/3/2019, Nzabandora Innocent yavuze ko yabonye Munyentwali Védaste alias Maître, Musonera André (Umukuru w'Umudugudu), Nyirahabimana Madéleine na Nshutiraguma bari mu bakubise Niyonshuti Vincent.

[28] Urukiko rw'Ubujurire rurasanga mu gusuzuma niba ukwemera icyaha k'uregwa kudashidikanywaho, nta cyabuza Urukiko kureba ibyo yavuze mu gihe cy'iperereza mu Bugenzacyaha no mu Bushinjacyaha, ariyo mpamvu uru Rukiko rugomba gusuzuma imvugo za Tuyishime Ezéchiel kugira ngo rumenye koko ibyo yemeye.

[29] Urukiko rw'Ubujurire rurasanga rero n'ubwo Tuyishime Ezéchiel alias Kadogo yaje guhindura imvugo, aburana mu Rukiko Rwisumbuye rwa Nyamagabe no mu Rukiko Rukuru, Urugereko rwa Nyanza yemera icyaha aregwa, mu Rukiko rwabanje akaba ataravuze Musonera André mu bantu bakubise Niyonshuti Vincent, mu Rukiko Rukuru, Urugereko rwa Nyanza, nk'uko bigaragara mu nyandiko-mvugo y'iburanisha yo ku wa 23/9/2020, asobanura ko yafatanyije na Nzabandora Innocent, Munyentwali Védaste na Habyarimana Innocent mu gukora icyaha baregwa, ko Musonera André yaje nyuma, bamaze gukubita Niyonshuti Vincent, ariko ibyo yavuze mu gihe cy'iperereza ntibivugurazanya n'ibyo Nzabandora Innocent alias Duri na Munyentwali Védaste alias Maître bavuze, kuva mu Bugenzacyaha kugeza mu Nkiko, bashinja Musonera André kuba nawe yarakubise Niyonshuti Vincent bikamuviramo urupfu. Rurasanga kandi nk'uko byagaragajwe haruguru, mu Bugenzacyaha no mu Bushinjacyaha, Tuyishime Ezéchiel yarashinje Musonera André kuba yakubise nyakwigendera ari kumwe na Munyentwali Védaste alias Maître, Nyirahabimana Madéleine n'abandi bari kumwe atabashije kumenya.

[30] Ku birebana no kuba Urukiko Rukuru, Urugereko rwa Nyanza rutaragombaga gushingira ku mvugo za Mungwarakarama Evariste kuko harimo urujijo, Urukiko rw'Ubujurire rurasanga uretse ko Musonera André adasobanura urwo rujijo, ibyo Mungwarakarama Evariste yavuze mu Bugenzacyaha, bishimangirwa n'ibivugwa n'abatangabuhamya bumviswe igihe cy'iperereza, n'abaregwa, ndetse na Tuyishime Ezéchiel alias Kadogo.

[31] Ku birebana no kuba Urukiko Rukuru, Urugereko rwa Nyanza rutaragomba guha agaciro imvugo za Kabatesi Jeannette na Mukamana Marthe kuko batavugisha ukuri kuko hari ibyo bapfa, kandi batigeze bagera aho icyaha cyabereye, Urukiko rw'Ubujurire rurasanga uretse kubivuga,

Musonera André atagaragaza ibimenyetso bibishimangira. Rurasanga ahubwo ibyo bavuze bishimangirwa n'imvugo z'abandi baregwa hamwe, bivuze koko ko basobanuye ibyo biboneye nk'uko Urukiko Rukuru, Urugereko rwa Nyanza rwarabyemeje.

[32] Usibye n'ibyo byose, Urukiko rw'Ubujurire rurasanga Musonera André atanenga imvugo z'abandi batangabuhamya zatumye Urukiko Rukuru, Urugereko rwa Nyanza rwemeza ko yagize uruhare mu rupfu rwa Niyonshuti Vincent, aribo Mukandoli Clémentine na Nsabira Joseph, kandi nabo bamushinja kuba ari mu bantu bakubise nyakwigendera Niyonshuti Vincent, ndetse muri dosiye ntaho bigaragara ko Mukamana Marthe, Mukandoli Clémentine na Nsabira Joseph bemeye ko ibyo bavuze aribyo Kabatesi Jeannette yababwiye.

[33] Hashingiwe ku byagaragajwe haruguru, Urukiko rw'Ubujurire rurasanga nta makossa Urukiko Rukuru, Urugereko rwa Nyanza rwakoze mu guhamya Musonera André icyaha aregwa, rushingiye ku mvugo za Nzabandora Innocent alias Duri na Munyentwali Védaste alias Maître no ku buhamya bwa Mungwarakarama Evariste, Kabatesi Jeannette na Mukamana Marthe.

[34] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga iyi ngingo y'Ubujurire bwa Musonera André, nta shingiro ifite.

b. Kumenya niba Urukiko Rukuru, Urugereko rwa Nyanza rwakoze amakosa yo kutabaza abatangabuhamya bavugwa na Musonera André ko bari kumushinjura

[35] Musonera André avuga ko anenga Urukiko Rukuru, Urugereko rwa Nyanza kuba rutabajije abatangabuhamya yarushyikirije bamushinjura aribo Gahonzire Damascène, Sibomana Ernest, Mbonimana Vincent, Niyonsenga Josué na Hatangimana Védaste, uyu bakaba bari bajyanye imbere y'urwibutso, aho bahuriye na Mungwarakarama Evariste, Boniface na Munyentwari Védaste, basanga Niyonshuti Vincent yamaze gukubitwa. Avuga ko aba batangabuhamya bari kugaragaza ko nta ruhare afite mu ikubitwa ya Niyonshuti Vincent.

[36] Ubushinjacyaha buvuga ko hashingiwe ku ngingo ya 107 y'Itegeko n° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Musonera André nta kimenyetso atanga kibuguruza ibyo Urukiko Rukuru, Urugereko rwa Nyanza rwashingiyeho, ko rero igihano yahawe gikaba kigomba kugumaho.

UKO URUKIKO RUBIBONA

[37] Ingingo ya 66 y'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko '' Ibintu umuburanyi asaba gutangira abatangabuhamya agomba kubisobanura mu magambo afutuye kandi atarondogoye. Iyo urukiko rusanze bikwiye, bifite ireme kandi bishobora kwemerwa, rushobora ku bwarwo gutegeka kubitangira abatangabuhamya. Urukiko kandi rushobora ku bwarwo gutangisha ikimenyetso ku bintu rubona ko bikwiye kugaragaza ukuri, iyo amategeko atabibuza''.

[38] Ingingo ya 66 yavuzwe haruguru yumvikanisha ko Urukiko rushobora gutumira umutangabuhamya wasabwe n'ababuranyi mu gihe rusanga ko ubuhamya bwe buri ngombwa, ko bushobora kugaragaza ukuri kuko bukwiye kandi bufite ireme, bivuze ko Urukiko rusuzuma mu bushishozi bwarwo niba ari ngombwa kumva umutangabuhamya usabwe n'umuburanyi, kandi rubikora rwubahiriza uburenganzira bw'uregwa bwo kwiregura (respect des droits de la défense), ko rero uregwa afite mbere na mbere ishingano yo kugaragariza Urukiko ku buryo bwumvikana (manière circonstanciée) ko umutangabuhamya uvuga akenewe cyane kugira ngo abone ubutabera.

[39] Dosiye y'urubanza igaragaza ko ku wa 6/8/2019, Musonera André yashyikirije Urukiko Rukuru, Urugereko rwa Nyanza imyanzuro ye aho yanengaga Urukiko Rwisumbuye rwa Nyamagabe kuba rutabajije abatangabuhamya be yari yasabye ko batumirwa, aribo Gahonzire Jean Damascène, Sibomana Ernest, Mbonimana Vincent, Niyonsenga Josué, Nshimiyimana Boniface na Hatangimana Védaste bari kugaragaza ko nta kintu na gito yakoze kuri Niyonshuti Vincent.

[40] Imikirize ry'urubanza rujuririrwa rigaragaza ko Urukiko Rukuru, Urugereko rwa Nyanza nta kintu rwasubije ku busabe bwa Musonera André.

[41] Nk'uko bigaragara mu nyandiko-mvugo ya Musonera André yo mu Bugenzacyaha no mu Bushinjacyaha, hashingiwe kandi ku nyandiko-mvugo y'iburanisha ku rwego rwa mbere no mu Rukiko Rukuru, Urugereko rwa Nyanza, uretse Gahonzire Jean Damascène, Nshimiyimana Boniface na Hatangimana Védaste, Musonera André yasobanuye ko igihe Niyonshuti Vincent yakubitwaga yari kumwe na Mungwarakarama Evariste, Habyarimana Innocent, Munyantwali Védaste alias Maître, Nzabandora Innocent alias Duri na Tuyishime Ezéchiel alias Kadogo. Yasobanuye mu iburanisha mu Rukiko Rwisumbuye rwa Nyamagabe ko yamanukanye na Hatangimana Védaste bagiye k'urwibutso, ko na Nshimiyimana Boniface bavuganaga kuri telephone, ndeste ko yabonanye na Gahonzire Jean Damascène agiye iwe kuhagura amayinite ya telefone.

[42] Urukiko rw'Ubujurire rurasanga nta kigaragaza ko Musonera André yari yasabye Urukiko rwabanje kumva abatangabuhamya avuga. Rurasanga kandi n'ubwo yabagaragaje gusa mu myanzuro ye y'ubujurire, ariko atarigeze asobanurira Urukiko icyo bari kuza kuvuga cya ngombwa, kirenze ibisanzwe byari byagezweho mu iperereza, kigaragaza ko koko kuba bataratumijwe byagize icyo bimwangiriza ku mikirize y'urubanza no ku butabera yari yiteze kubona.

[43] Hashingiwe ku byasobanuye mu gace kabanziriza aka, Urukiko rw'Ubujurire rurasanga n'ubwo Urukiko Rukuru, Urugereko rwa Nyanza rutasubije ku kibazo Musonera André yarugaragarije cyo kuba Urukiko ku rwego rwa mbere rutabajije abatangabuhamya bashoboraga kugaragaza ko atari mu bantu bakubise Niyonshunti Vincent, nta cyari gutuma bahamagazwa cyane cyane ko yivugiye abo bari kumwe igihe Niyonshuti Vincent yakubitwaga, ndetse ko hari abatangabuhamya bagaragaje ko Niyonshuti Vincent yageze mu maboko ye ari muzima.

[44] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga nta mpamvu yo gutumira abatangabuhamya bavugwa na Musonera André, iyi ngingo ye y'ubujurire nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[45] Rwemeje ko ubujurire bwatanzwe na Musonera André nta shingiro bufite.

[46] Rwemeje ko urubanza n° RPA 00698/2019/HC/NYZ rwaciwe ku wa 20/10/2020 n'Urukiko Rukuru, Urugereko rwa Nyanza, rudahindutse.

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