

UBUSHINJACYAHA v NZABONIMPA

[Rwanda URUKIKO RW'UBUJURIRE – RPA 00059/2018/CA (Rugabirwa, P.J., Kaliwabo, Tugireyezu J.) 15 Nyakanga 2019]

Amategeko yerekeye ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Mu manza nshinjabyaha ibimenyetso byose bishatswe ku buryo buhuje n'amategeko biremerwa, icyakora imvugo zitangiwe mu zindi nzego zitari iz'ikurikiranacyaha cyangwa mu rukiko, zigomba gushyigikirwa n'ibindi bimenyetso kugira ngo zigire agaciro gahamya ushinjwa icyaha..

Incamake y'ikibazo: Uru rubanza rwatangiriye Rukiko Rukuru Uregereko rwa Musanze, uregwa akurikiranywe n'ubushinjacyaha ashinjwa gutera inkunga umutwe wa FDLR, awugemurira ibyo kurya. Urwo Rukiko rwaciye urubanza rumuhamya icyaha cyo kugira uruhare mu bikorwa by'ishyirahamwe ry'iterabwoba, rumuhanisha igifungo cy'imyaka 15. Mu gufata icyo cyemezo, urwo Rukiko rwashingiye ku buhamya bwatanzwe n'uwitwa Makombe no ku mvugo y'uregwa yakoreye imbere y'umusirikare wamwakiriye igihe yavaga muri RDC, no kuba izo mvugo zihuriza ku kuba uregwa yaragemuriraga ibyo kurya abagize umutwe wa FDLR akanabacumbikira, ndetse ngo akaba yarabashyikirizaga amakuru arebana n'ingabo z'u Rwanda.

Uregwa yajuririye urwo rubanza mu Rukiko rw'Ikirenga, nyuma y'ivugururwa ry'ububasha bw'inkiko, urubanza rushyikirizwa Urukiko rw'Ubujurire, yaburanye avuga ko yahamijwe icyaha atakoze, kuko hashingiye ku buhamya bw'uwitwa Makombe wamumenesheje mu murima we agamije kuwigarurira, ko uwamushinje ari nawe wamushimuse amuvanye mu rugo rwe, nyamara nta wundi mutangabuhamya umushinja gukorana n'abarwanyari ba FDLR. Yajuriye kandi ahakana imvugo yavugiye imbere y'umusirikare wamwakiriye ngo kuko yayemejwe ku gahato.

Ubushinjacyaha bwo buvuga ko nta nyungu umutangabuhamya yari afite mu gushinja uregwa kandi ibyo amushinja nawe ubwe akaba yarabyemeye imbere y'umusirikare wamwakiriye, kandi ko ubuhamya bwatangiye imbere y'umusirikare bufite agaciro kuko nawe ari umugenzacyaha wa gisirikare.

Incamake y'icyemezo: 1. Nubwo mu manza nshinjabyaha ibimenyetso byose bishatswe ku buryo buhuje n'amategeko byemerwa, nyamara agaciro kabyo karutanwa hakurikijwe ubwoko bwabyo n'uburyo byabonetsemo. Niyo mpamvu ubuhamya butangiye mu zindi nzego zitari iz'iperereza cyangwa mu Rukiko, bugomba gushyigikirwa n'ibindi bimenyetso kugira ngo bugire agaciro gahamya ushinjwa icyaha.

**Ubujurire bufite ishingiro;
Uregwa ni umwere.**

Amategeko yashingiweho:

Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 65.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nzabonimpa David wabarizwaga muri Groupement ya BUHUMBA muri RDC, yafashwe ashinjwa gutera inkunga umutwe wa FDLR, awugemurira ibyo kurya ndetse no kubaha amakuru arebana na positions z'abasirikare b'u Rwanda. MAKOMBE Deo, umuyobozi wa Groupement ya BUHUMBA yamushyikirije ingabo z'u Rwanda zikorera ku mupaka wa Kabuhanga, ndetse atanga n'ubuhamya avuga ko NZABONIMPA David asuzugura ubutegetsi bwabo, yitwaje ko akorana n'abarwanyu ba FDLR, akaba abagemurira ibyo kurya, ahitwa i Rugali.

[2] Ku wa 31/12/2019, NZABONIMPA David yabajijwe n'umusirikare wamwakiriye, Sgt RUKUNDO, amwemerera ko afatanyije na MAKOMBE Deo bakusanyije ibyo kurya, hanyuma akabijyana kuri "dépôt" iherereye i Rugali, aho abarwanyu ba FDLR babisanze. Yavuze kandi ko hari n'igihe bamwe mu barwanyu ba FDLR bazaga iwe gutwara ibyo kurya babaguriye, abo yibuka amazina yabo akaba ari KAMURE, CYITATIRE na SIBOMANA.

[3] NZABONIMPA David yashyikirijwe Ubugenzacyaha, abazwa ahakana icyaha, avuga ko yafashwe ku kagambane ka MAKOMBE Deo kuko yashakaga kumwambura isambu ye, kandi ko kubera iyo mpamvu, uyu yamenesheje umugore n'abana be, ko atemera imvugo ye yakoreye mu nzego za gisirikare kuko yayemejwe ku gahato. Iyi myiregurire niyo yakomeje kugeza mu Rukiko Rukuru rwamuciriye urubanza ku rwego rwa mbere.

[4] Uregereko rw'Urukiko Rukuru rukorera i Musanze, rwaciye urubanza n° RP 00002/2017/HC/HC/MUS ku wa 10/04/2018, rwahamije NZABONIMPA David icyaha cyo kugira uruhare mu bikorwa by'ishyirahamwe ry'iterabwoba, rumuhanisha igifungo cy'imyaka 15.

[5] Mu gufata icyo cyemezo, urwo Rukiko rwashingiye ku buhamya bwatanzwe na MAKOMBE Deo no ku mvugo ya NZABONIMPA Deo yakoreye imbere y'umusirikare wamwakiriye igihe yavaga muri RDC, no kuba izo mvugo zihuriza ku kuba NZABONIMPA yaragemuriraga ibyo kurya abagize umutwe wa FDLR akanabacumbikira, ndetse ngo akaba yarabashyikirizaga amakuru arebana n'ingabo z'u Rwanda.

[6] NZABONIMPA David yajuririye urwo rubanza mu Rukiko rw'Ikirenga, ubujurire bwe bwandikwa kuri n° RPA 00015/2018/SC, nyuma y'ivugururwa ry'ububasha bw'inkiko, urubanza rushyikirizwa Urukiko rw'Ubujurire, aho bwanditswe kuri n° RPA 00059/2018/CA, hashingiye ku ngingo ya 52 n'ya 105 z'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

[7] NZABONIMPA David yunganiwe na Me NKUNDIRUMWANA Joseph, yajuriye avuga ko yahamijwe icyaha atakoze, kuko hashingiye ku buhamya bwa MAKOMBE Deo wamumenesheje mu murima we agamije kuwigarurira, ko uwamushinje ari nawe wamushimuse amuvanye mu rugo rwe, nyamara nta wundi mutangabuhamya umushinja gukorana n'abarwanyu ba FDLR. Yajuriye kandi ahakana imvugo yavugiye imbere y'umusirikare wamwakiriye kuko yayemejwe ku gahato.

[8] Ubushinjacyaha buhagarariwe na RUDATINYA Gaspard, Umushinjacyaha ku rwego rw'Igihugu, buvuga ko nta nyungu MAKOMBE Deo yari afite mu gushinja NZABONIMPA kandi ibyo amushinja nawe ubwe akaba yarabyemeye imbere y'umusirikare wamwakiriye, bityo ko MAKOMBE Deo yavugiye imbere ya Sgt RUKUNDO ifite agaciro kayo kuko nawe ari umugenzacyaha wa gisirikare.

[9] Urubanza rwaburanishijwe mu ruhamwe ku wa 30/05/2019, NZABONIMPA David yunganiwe na Me NKUNDIRUMWANA Joseph, naho Ubushinjacyaha buhagarariwe na RUDATINYA Gaspard, Umushinjacyaha ku rwego rw'Igihugu.

[10] Muri uru rubanza, Urukiko rukaba rugiye gusuzuma niba ubuhamya bwa Makombe n'imvugo ya NZABONIMPA David byakorewe imbere ya Sgt RUKUNDO bishobora gufatwa nk'ibimenyetso bihamya ZABONIMPA David icyaha

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba inyandiko mvugo yo ku wa 31/12/2016 y'ibazwa rya NZABONIMPA David n'ubuhamya bwa MAKOMBE Deo bishobora gufatwa nk'ibimenyetso bimuhamya icyaha aregwa.

[11] NZABONIMPA David avuga ko Urukiko Rukuru rwahaye agaciro inyandiko mvugo y'ibazwa rye ryakorewe imbere y'umusirikare wamwakiriye, nyamara ngo ibiyikubiyemo akaba atabyemera kuko yabyemejwe ku bw'ibikorwa bibabaza umubiri yakorewe, kandi ko akigezwa imbere y'Umugenzacyaha yavugurujye iyi nyandiko. NZABONIMPA David avuga kandi ko iyo imvugo ye iza gufatwaho ukuri, na MAKOMBE Deo yari gukurikiranwa kuko nawe yamuvuze mu bo bafatanyaga kugemurira abarwanyije ba FDLR.

[12] NZABONIMPA David yasobanuye ko yashimuswe na MAKOMBE Deo wari Chef de Groupement ya BUHUMBA (RDC), aho nawe yari atuye, amuziza isambu ye kuko yashakaga kuyimwambura, ndetse ko na nyuma yo kumufata, yahise amenyesha umugore n'abana be. Avuga kandi ko, uyu muyobozi yahoraga amwaka amafaranga (ikoro), amubwira ko ni atayatangira azamusubiza iwabo mu Rwanda, ngo uwo mugambi akaba ariwo yashyize mu bikorwa ubwo yamubeshyeraga ko akorana na FDLR, bityo ko atemera ubuhamya bwa MAKOMBE Deo mu gihe ibikorwa amushinja nta wundi mutangabuhamya wigeze abyemeza.

[13] Me NKUNDIRUMWANA Joseph, wunganira NZABONIMPA David, avuga ko uwo yunganiye yagambaniwe na MAKOMBE Deo kubera amakimbirane bari bafitanye kuko uyu yamuhimbiye icyaha kidafitiye ibimenyetso kubera ko ariwe mutangabuhamya rukumbi ubimushinja. Avuga kandi ko NZABONIMPA David yashinjwe icyaha cyo gutanga amakuru arebana n'ingabo z'u Rwanda ariko abamushinja ntibasobanure amakuru yatanze n'uwo yayashyikirije.

[14] Me NKUNDIRUMWANA Joseph avuga kandi ko inyandiko mvugo yakorewe imbere ya Sgt RUKUNDO, umusirikare wakiriye NZABONIMPA David, itagombye kuba ikimenyetso gishinja uwo yunganira kuko byakozwe n'umukozi utabifitiye ububasha, kandi ko ibiyikubiyemo NZABONIMPA David yabivugurujye akigera mu Bugenzacyaha, aho yisobanuye nta gahato ashyizweho n'umusirikare wamubajije.

[15] Ubushinjacyaha buvuga ko bujire bwa NZABONIMPA David nta gaciro bufite kubera ko ibazwa rye ryakozwe n'umusirikare ufite ububasha bwo gukora iperereza, kandi ko ibyo yabajijwe yabyisobanuyeho mu bwisanzure, ko atashoboraga gushyirwaho agahato ngo ibisobanuro yatanze bihuze neza n'uburyo MAKOMBE Deo, umushinja, abisobanura. Avuga kandi ko NZABONIMPA David yagiye yivuguruza ku birebana n'amakimbirane yari afitanye na MAKOMBE kuko yatangiye avuga ko uyu yabanje kumenesha umugore n'abana be, ariko ko imbere y'uru Rukiko avuga ko MAKOMBE Deo yabirukanye nyuma y'ifungwa rye. Ubushinjacyaha busoza buvuga ko NZABONIMPA David yashinje MAKOMBE Deo kuba barafatanyije mu kugemurira abarwanyi ba FDLR agamije kumwihimuraho, ariko ko atagomba kwireguza kuko kuba uwo ashinja atarakurikiranwa.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 65 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 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.”

[17] Urukiko rurasanga, Urukiko Rukuru, Urugereko rwa Musanze, mu guhamya icyaha NZABONIMPA David rwashingiye ku kimenyetso kimwe rukumbi kigizwe n'imvugo yavugiye mu nzego za gisirikare ku wa 31/12/2016, akimara gushyikirizwa ingabo z'u Rwanda, aho yemeraga icyaha akanasobanura uburyo yakoranaga na FDRL, maze urwo Rukiko rwemeza ko iyo mvugo isobanura ku buryo burambuye imikorere y'icyaha, ko kandi NZABONIMPA David atashoboye kugaragaza ikimenyetso cy'uko yashyizweho agahato, cyangwa amakimbirane yaba yari afitanye na MAKOMBE Deo wamushinje icyo cyaha.

[18] Urukiko rurasanga MAKOMBE Deo, wari Chef de Groupement de BUHUMBA, akaba yarafashe NZABONIMPA David akanamushyikiriza ingabo z'u Rwanda, ari nawe wenyine umushinja gukorana na FDLR, kandi muri iyo mvugo ye, MAKOMBE Deo akaba anahamya ko NZABONIMPA David amusuzugura yitwaje ko akorana n'abayobozi ba FDLR.

[19] Urukiko rurasanga, ubuhamya bw'umuntu umwe, wari usanzwe ari n'umuyobozi wa NZABONIMPA David, univugira ko NZABONIMPA David amusuzugura, ndetse agashinjwa n'uwo yafashe ko yamenesheje umugore we n'abana, birutera ugushidikanya ku cyaha amushinja cyo gukorana n'umutwe w'iteraboba wa FDLR.

[20] Urukiko rurasanga, n'ubwo mu manza nshinjabyaha ibimenyetso byose bishatswe ku buryo buhuje n'amategeko byemerwa, nyamara agaciro kabyo karutanwa hakurikijwe ubwoko bwabyo n'uburyo byabonetsemo. Niyo mpamvu ubuhamya butangiwe mu zindi nzego zitari iz'iperereza cyangwa mu Rukiko, bugomba gushyigikirwa n'ibindi bimenyetso kugira ngo bugire agaciro gahamya ushinjwa icyaha.

[21] Urukiko rurasanga imvugo ya NZABONIMPA David yavugiye mu rwego rwa gisirikare ku wa 31/12/2016, ariko akaba yarahise ayivuguruza akigera mu Bugenzacyaha, itafatwa nk'ikimenyetso cyihagije kigaragaza ko yakoze icyaha mu gihe iyo mvugo itunganiwe n'ikindi kimenyetso.

[22] Urukiko rurasanga, nta gikorwa na kimwe Ubushinjacyaha bwatanze kigaragaza ko NZABONIMPA yatanze amakuru mu mutwe wa FDLR arebana n'ingabo z'u Rwanda, bityo iki cyaha akaba akwiye kugihanagurwaho kuko yagihamijwe n'Urukiko Rukuru, Urugereko rwa Musanze nta bimenyetso bikimushinja.

[23] Urukiko rurasanga, NZABONIMPA David agomba kugirwa mwere ku byaha akurikiranyweho ku bwo gushidikanya ku bijyanye n'bimenyetso byatanzwe nk'uko biteganywa n'ingingo ya 165 y'Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko "Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze"

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko ubujurire bwa NZABONIMPA David bufite ishingiro ;

[25] Rwemeje ko NZABONIMPA David agizwe umwere ku cyaha cyo gukorana n'umutwe w'iterabwoba ;

[26] Ruvuze ko imikirize y'urubanza n° RP 00002/2017/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 10/04/2018, ihindutse mu ngingo zarwo zose ;

[27] Rutegetse ko NZABONIMPA David ahita afungurwa urubanza rukimara gusomwa ;

[28] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.