UBUSHINJACYAHA v HAKIZIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00663/2021/CA (Mukamurenzi, P.J.) 24 Gashyantare 2023]

Amategeko agenga imanza nshinjabyaha – Igabanyagihano – Mu rwego rw'ibirego nshinjabyaha iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo, ariko mu bujurire, Umucamanza agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n'Umucamanza wo mu Rukiko rubanza, ari uko amaze kugaragaza ko Urukiko rubanza rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwarwo mu gutanga icyo gihano.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, uregwa akurikiranywe ku cyaha cyo gusambanya umwana byakurikiwe no kubana nawe nk'umugore n'umugabo, buvuga ko yagikoze, ubwo umwana witwa N.C. ufite imyaka 16 y'amavuko yari aherekeje uregwa asanga abasore mu nzira bafite amagare baramutwara, bamujyana aho uregwa yakodesheje inzu ahita amusambanya ndetse bakomeza kubana nk'umugabo n'umugore. Urwo Rukiko rwaciye urubanza nuko rwemeza ko uregwa ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu.

Uregwa yajuririye imikirize y'urubanza mu Rukiko Rukuru, asaba kugabanyirizwa igifungo cya burundu yahanishijwe kuko yaburanye yemera icyaha ariko ahabwa igihano kirekire, kandi agikora atari azi imyaka N.C. yari afite, ko akeneye kumusanga bagafatanya kurera umwana wavutse. Urwo Rukiko narwo rwaciye urubanza nuko rwemeza ko ubujurire bwe bufite ishingiro, rwemeza ko imikirize y'urubanza rwajuririwe ihinduka ku bijyanye n'igihano, rumuhanisha igifungo cy'imyaka 25.

Uregwa yarongeye ajurira mu Rukiko rw'Ubujurire, avuga ko atishimiye imikirize y'urubanza kuko Urukiko Rukuru rwitaye gusa ku mvugo z'Ubushinjacyaha ntirwita ku bimenyetso n'ubusobanuro yarugaragarije. Akomeza avuga ko yemeye icyaha kuva mu nzego z'iperereza, asaba imbabazi, no kugabanyirizwa igihano kugira ngo ajye kurera umwana wabyawe n'umukobwa aregwa gusambanya, kuba nawe ubwe yarakoze icyaha afite imyaka 22 y'amavuko ariho akiva mu bwana ari mu kigero kimwe n'uwo mwana w'imyaka 16, ko n'ubwo yagabanyirijwe igihano cyakongera kikagabanywa hagendewe ku buremere bw'icyaha n'uburyo icyaha cyakozwemo.

Ubushinjacyaha nabwo bwaburanye bwemera ko uregwa yagabanyirizwa igihano, agahanishwa igifungo cy'imyaka 10 bigakorwa hanagendewe ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RS/INCONST/SPEC/00003/2019/CS rwaciwe ku wa 04/12/2019.

Incamake y'icyemezo: Mu rwego rw'ibirego nshinjabyaha iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo, ariko mu bujurire, Umucamanza agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n'Umucamanza wo mu Rukiko rubanza, ari uko amaze kugaragaza ko Urukiko rubanza rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwarwo mu gutanga icyo gihano.

Urubanza ruhindutse ku bijyanye n'igihano.

Amategeko yashingiweho:
Itegeko Nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49.

Imanza zifashishijwe:

Ubushinjacyaha v. Nsabimana alias Sankara n'abandi, RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022

Ubushinjacyaha v. Hakizimana Melan, RPAA 00379/2021/CA rwaciwe n'Urukiko rw'Ubujurire kuwa 20/01/2023.

Ubushinjacyaha v.Nyirishema Fiston, RPAA 00408/2021/CA rwaciwe n'Urukiko rw'Ubujurire.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha burega Hakizimana Eric icyaha cyo gusambanya umwana byakurikiwe no kubana nawe nk'umugore n'umugabo, buvuga ko yagikoze mu mwaka wa 2016, ari mu Mudugudu wa Gasenyi, Akagali ka Kintambwe, ubwo umwana witwa N.C. ufite imyaka 16 y'amavuko yari aherekeje uregwa asanga abasore mu nzira bafite amagare baramutwara, bamujyana aho HAKIZIMANA Eric yakodesheje inzu ahita amusambanya ndetse bakomeza kubana nk'umugabo n'umugore. HAKIZIMANA Eric yaburanye yemera icyaha aregwa, avuga ko uko Ubushinjacyaha bwasobanuye imikorere y'icyaha ariko byagenze, ariko ko bari bumvikanye.

[2] Mu rubanza no RP Min 00013/2019/TGI/GSBO rwaciwe ku wa 19/07/2019, Urukiko Rwisumbuye rwa Gasabo rwahamije HAKIZIMANA Eric icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu nyuma yo gusanga hari ibimenyetso bifatika byerekana ko yakoze icyaha aregwa birimo kuba yaraburanye acyemera, imvugo z'umwana N.C. umushinja kumusambanya, akanamugira umugore ndetse akamutera inda nyuma akamwohereza iwabo, ubuhamya bw'ababajijwe mu iperereza barimo Habanabashaka Viollette (umubyeyi we), Mukagakwisi Laurence na Nyiragwaneza Donatille. Rwemeza ko ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu.

[3] HAKIZIMANA Eric yajuririye imikirize y'urubanza mu Rukiko Rukuru, asaba kugabanyirizwa igifungo cya burundu yahanishijwe kuko yaburanye yemera icyaha ariko ahabwa igihano kirekire, kandi agikora atari azi imyaka N.C. yari afite, ko akeneye kumusanga bagafatanya kurera umwana wavutse.

[4] Mu rubanza no RPA Min 00038/2019/HC/KIG rwaciwe ku wa 29/06/2021, Urukiko Rukuru, rwasanze hari impamvu nyoroshyacyaha zashingirwaho mu kugabanyiriza HAKIZIMANA Eric igihano kuko yaburanye yemera icyaha cyo kubana na N.C. nk'umugabo n'umugore akanagisabira imbabazi, rwemeza ko ubujurire bwe bufite ishingiro, ko imikirize y'urubanza rwajuririwe ihindutse ku bijyanye n'igihano, rumuhanisha igifungo cy'imyaka 25.

[5] HAKIZIMANA Eric yajuririye iyo mikirize y'urubanza mu Rukiko rw'Ubujurire, avuga ko atishimiye imikirize y'urubanza kuko Urukiko Rukuru rwitaye gusa ku mvugo z'Ubushinjacyaha ntirwita ku bimenyetso n'ubusobanuro yarugaragarije. Mugusobanura impamvu z'ubujurire Me MUKWENDE MILIMO Olivier avuga ko HAKIZIMANA Eric yemeye icyaha kuva mu nzego z'iperereza, asaba imbabazi, akagabanyirizwa igihano kugira ngo ajye kurera umwana wabyawe n'umukobwa aregwa gusambanya, kuba nawe ubwe yarakoze icyaha afite imyaka 22 y'amavuko ariho akiva mu bwana ari mu kigero kimwe n'uwo mwana w'imyaka 16, ko n'ubwo yagabanyirijwe igihano cyakongera kikagabanywa hagendewe ku buremere bw'icyaha n'uburyo icyaha cyakozwemo

[6] Urubanza rwaburanishijwe mu ruhame ku itariki ya 10/02/2023, HAKIZIMANA Eric yunganiwe na Me MUKWENDE Milimo Olivier, Ubushinjacyaha buhagarariwe na UWIZEYE Jean Marie, Umushinjacyaha ku Rwego rw'Igihugu. Iburanisha ripfundikiwe ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku wa 24/2/2023.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba HAKIZIMANA Eric yakongera kugabanyirizwa igihano

[7] HAKIZIMANA Eric avuga ko yaburanye urubanza ariwe wajuriye ariko mu mikirize y'urubanza abona imvugo yavuze zose zitaritaweho, ko n'ubwo yagabanyirijwe igihano byatewe n'uko byasabwe n'umushinjacyaha kuko we yumvaga yagabanyirizwa igihano kikajya munsi y'icyo yahawe kubera uburyo yemeye icyaha akanagisabira imbabazi. Avuga ko yajuririye asaba kongera kugabanyirizwa igihano kugira ngo ahabwe amahirwe yo gusubira mu muryango nyarwanda no ku bw'inyungu z'umwana na nyina kuko kubera ubuzima busharira barimo ari we bahanze amaso kandi hakaba nta mahirwe ubu umwana afite yo kujya mu ishuri no guhabwa uburere bukwiye, ko ibyo bamushinja ko yirikanye umugore we atari byo.

[8] Me MUKWENDE Olivier umwunganira, asaba Urukiko rw'Ubujurire kuzita ku mpamvu nyoroshyacyaha kuko yaburanye yemera icyaha kuva mu nzego z'iperereza kugeza mu Rukiko Rukuru, hakanarebwa buremere bw'icyaha n'uburyo icyaha cyakozwemo ndetse no kuba yarakoze icyaha akiva mu bwana, kuko yari afite imyaka 22 y'amavuko, uwo yasambanyije akamugira umugore afite imyaka 16 y'amavuko, bigaragara ko bari hafi mu kigero kimwe, ko ibyo byashingirwaho, kimwe n'ibiteganywa n'ingingo ya 49 y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange n'ibyemejwe mu rubanza no RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019 no mu manza zaciwe n'Uru Rukiko zirimo urubanza no RPA 00032/2019/CA rwaciwe ku wa 28/02/2020 haburana Ubushinjacyaha na NZAFASHWANIMANA Jean de Dieu n'urubanza No RPAA 00115/2021/CA rwaciwe ku wa 16/09/2022 haburana Ubushinjacyaha na NTEZIRYAYO Daniel, akagabanyirizwa igihano yahawe kikava ku myaka 25 kigashyirwa ku myaka 10 kuko yazavamo yarihannye.

[9] Ubushinjacyaha nabwo buvuga ko kuba HAKIZIMANA Eric yaremeye icyaha kuva agifatwa no mu Nkiko yaburaniyemo agakomeza kucyemera kandi ukwemera icyaha akaba ari imwe mu mpamvu zakoroshya ububi bw'icyaha, byashingirwaho akagabanyirizwa igihano, agahanishwa igifungo cy'imyaka 10 nk'uko we n'umwunganira babisaba; bigakorwa hanagendewe ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RS/INCONST/SPEC/00003/2019/CS rwaciwe ku itariki ya 04/12/2019 haburana KABASINGA Florida na Leta y'u Rwanda aho rwavuze ko ingingo ya 133 igika cya 5 y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange inyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda kuko idatuma hatangwa ubutabera buboneye n'ubwisanzure bw'umucamanza.

UKO URUKIKO RUBIBONA

[10] Imiburanire y'impande zombi ihuriza ku kuba HAKIZIMANA Eric yakongera kugabanyirizwa igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) yahanishijwe agabanyirijwe igihano n'Urukiko Rukuru.

[11] Ikibazo cyo kongera kugabanyirizwa igihano mu gihe ariyo mpamvu y'ubujurire cyatanzweho umurongo mu rubanza N° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha, NSABIMANA Callixte alias Sankara na bagenzi be. Muri urwo rubanza Urukiko rw'Ubujurire rwagaragaje ko mu rwego rw'ibirego nshinjabyaha iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo hakurikijwe ibiteganywa n'ingingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange[1], ariko ko mu bujurire, Umucamanza agomba

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[1] Ingingo ya 49 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 ibyaha n'ibihano muri rusange iteganya ko "Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye uregwa agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo''

kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n'Umucamanza wo mu Rukiko rubanza, ari uko amaze kugaragaza ko Urukiko rubanza rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwarwo mu gutanga icyo gihano[2].

[12] Dosiye y'urubanza igaragaza ko mu 2016 ubwo HAKIZIMANA Eric yari afite imyaka 22 y'amavuko yabanye nk'umugabo n'umugore na NC wari ufite imyaka 16 y'amavuko, nyuma uyu aza gusubira iwabo aranahabyarira. Mu nzego z'iperereza HAKIZIMANA Eric yemeye icyaha aregwa akomeza no kucyemera aburana mu Nkiko. Urukiko Rwisumbuye rumuhanisha igihano cy'igifungo cya burundu, mu rwego rw'ubujurire, Urukiko Rukuru rumugabanyiriza igihano rushingiye ku rubanza RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019, haburana KABASINGA Florida na Leta y'u Rwanda rwemeje ko agace ka 5 k'ingingo ya 133 y'itegeko nº68/2018 ryo ku wa 30/08/2018 kanyuranyije n'Itegeko Nshinga, runashingiye ku biteganywa n'ingingo ya mbere, agace ka mbere y'Itegeko No 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, rumuhanisha igifungo cy'imyaka 25.

[13] Uru Rukiko ruributsa ko ibyerekeye kugabanya igihano kugera munsi y'igihano gito giteganywa n'itegeko byafashweho umurongo mu rubanza N° RPAA 00032/2019/CA rwaciwe ku wa 28/02/2020 haburana Ubushinjacyaha na NZAFASHWANIMANA Jean de Dieu aho Urukiko rw'Ubujurire rwemeje ko umucamanza atagomba kugira ikimuzitira mu kugabanyiriza ushinjwa igihano ndetse no kugeza munsi y'igihano gito itegeko riteganyiriza icyaha aburanisha kuko kubikora byaba ari ukubangamira ubwigenge bw'umucamanza mu kugena igihano gikwiranye n'uburemere bw'icyaha. Uwo murongo akaba ari nawo wafashwe n'uru Rukiko mu manza nyinshi zakurikiyeho, ndetse uru Rukiko rukaba rwaremeje ko iki kibazo kidakwiye kongera kugibwaho impaka[3].

[14] Nk'uko urubanza rwajuririwe rubigaragaza, Urukiko Rukuru rwagabanyirije HAKIZIMANA Eric igihano cy'igifungo cya burundu yari yarahanishijwe kubera kubana n'umwana nk'umugabo n'umugore, rumuhanisha igifungo cy'imyaka 25 kubera ko yaburanye yemera icyaha. Urukiko rusanga ariko n'ubwo Urukiko Rukuru rwamugabanyirije igihano, rutarahaye agaciro gakwiye ukwemera icyaha yakoze ku buryo budashidikanywaho kuva agifatwa, kuba ari ubwa mbere ahamwe n'icyaha no kuba yarakoze iki cyaha afite imyaka 22 y'amavuko kuko n'ubwo yari arengeje imyaka 18 y'amavuko, yari akiri mu kigero cy'abasore kirangwa ahanini no kudatekereza ku ngaruka z'ibyo bakora. Izi mpamvu nyoroshyacyaha zifatiwe hamwe zigahuzwa n'ibiteganywa n'ingingo ya 49 y'itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Urukiko rw'Ubujurire rusanga yakongera kugabanyirizwa igihano kugira ngo ahanwe koko mu nyungu zo kurengera sosiyete no gukumira ibyaha bishya ariko binahuzwe n'inyungu yo gusubiza mu buzima busanzwe uwakatiwe.

[15] Urukiko rusanga ariko impamvu HAKIZIMANA Eric atanga z'uko yagabanyirizwa igihano ku bw'inyungu z'umwana we n'umugore we, nta shingiro zahabwa kuko haba mu mvugo ze n'iz'umwana wasambanyijwe bigakurikirwa no kubana nawe nk'umugabo n'umugore, zigaragaza ko bombi ibyo kubana byabananiye bigatuma N.C asubira iwabo, aba ari ho abyarira, nyuma ajya gutanga ikirego amurega kubera ko ntacyo yamufashaga mu bijyanye no kurera umwana babyaranye.

[16] Hashingiwe ku bimaze gusobanurwa haruguru no ku mpamvu nyoroshyacyaha zavuzwe zijyanye n'uko HAKIZIMANA Eric yaburanye yemera icyaha, kuba ari ubwa mbere yari ahamwe n'icyaha no kuba yarakoze icyaha ariho akigera mu kigero cy'abantu bakuru kuko yari afite imyaka 22, Urukiko rukaba rugabanyirije HAKIZIMANA Eric igihano, akaba agomba guhanishwa igifungo cy'imyaka icumi (10) gisimbura igifungo cy'imyaka makumyabiri n'itanu (25) yari yarahanishijwe mu rubanza rujuririrwa.

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[2] Urubanza N° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha, NSABIMANA Callixte alias Sankara na bagenzi be, igika cya 252-254.

[3] Reba urubana RPAA 00379/2021/CA rwaciwe kuwa 20/01/2023 haburana Ubushinjacyaha na HAKIZIMANA Melan, igika cya 18., urubanza no RPAA 00408/2021/CA haburana Ubushinjacyaha na NYIRISHEMA Fiston, igika cya 19.

III. ICYEMEZO CY'URUKIKO

[17] Rwemeje ko ubujurire bwa HAKIZIMANA Eric bufite ishingiro ku byerekeranye no kugabanya igihano.

[18] Rwemeje ko imikirize y'urubanza no RPA Min 00038/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/06/2021 ihindutse gusa ku byerekeranye n'igihano yari yahawe.

[19] Ruhanishije HAKIZIMANA Eric igifungo cy'imyaka icumi (10).

[20] Rutegetse ko asonerwa amagarama y'urubanza kuko aburana afunzwe.