UBUSHINJACYAHA v. MUSENGIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00262/2021/CA (Mukandamage, P.J.) 28 Ukwakira 2022]

Amategekoagenga imanza nshinjabyaha – Impamvu nyoroshyacyaha – Ikigero cy'imyaka y'uregwa – Kuba uregwa yarakoze icyaha aribwo akiva mu bwana byaba impamvu nyoroshyacyaha ituma uregwa agabanyirizwa igihano.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi, uregwa akurikiranywe ku cyaha cyo gusambanya abana 2 b'abakobwa, buvuga ko, we n'uwitwa Tuyishimire bashutse abana babiri U. R. na N. S. babajyana mu nzu barabakingirana, barabasambanya. Urwo Rukiko rwaciye rusanga n'ubwo uregwa ahakana icyaha aregwa, hari ibimenyetso bifatika byerekana ko yagikoze, birimo imvugo z'abatangabuhamya na raporo ya Muganga igaragaza ko abo bana basambanyijwe, maze rwemeza ko ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka 20.

Uregwa yajuririye Urukiko Rukuru, avuga ko Urukiko Rwisumbuye rwa Gicumbi rwamuhamije icyaha cyo gushuka abana, akabasambanya, rumuhanisha igifungo cy'imyaka 20 nta bimenyetso simusiga rushingiyeho, ko abo bakobwa bavuga ko yasambanyije atabazi nta n'aho yahuriye nabo, avuga kandi ko Urukiko nta perereza urukiko rwakoze kubo yakoranaga nabo, ababyeyi n'abaturanyi ngo rumenye ukuri. Urwo Rukiko narwo rwaciye urubanza nuko rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire avuga ko Urukiko Rukuru rwamuhamije icyaha atakoze, ko nta bimenyetso bidashidikanywaho rwashingiyeho, ko ahubwo rwaciye urubanza rugenekereje

Ubushinjacyaha bwo bwaburanye buvuga ko ibimenyetso byose byashingiweho n'urukiko rwabanje byuzuzanya kandi bihamya uregwa icyaha cyo gusambanya abana, busaba Urukiko rw'Ubujurire kugumishaho imikirize y'urubanza rwajuririw

Incamake y'icyemezo: 1. Kuba uregwa yarakoze icyaha aribwo akiva mu bwana byaba impamvu nyoroshyacyaha ituma uregwa agabanyirizwa igihano, bityo Musengimana ahanishijwe igihano cy'igifungo cy'imyaka 15 aho kuba imyaka 20.

Ubujurire nta shingiro bufite;
Urubanza ruhindutse gusa ku birebana n'igihano;
Uregwa ahanishijwe igifungo cy'imyaka 15.

Amategeko yakoreshejwe:

Itegeko Nº 69/2019 ryo ku wa 08/11/2019 ihindura ingingo ya 133 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 4.

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

Imanza zakoreshejwe:

Ubushinjacyaha v. Nzafashwanimana Jean de Dieu, RPAA 00032/2019/CA rwaciwe n'urukiko Rw'Ubujurire ku wa 28/02/2020.

Ubushinjacyaha v.Nsengiyaremye Jean Paul;RPAA 00384/2020/CA rwaciwe n'urukiko Rw'Ubujurire ku wa 29/10/2021.

Ubushijacyaha v. Shakabatenda Jean de Dieu RPAA 00039/2021/CA rwaciwe n’urukiko Rw’Ubujurire ku wa 02/07/2021.

Ubushijacyaha v. Dusabimana, RPAA 00174/2021/CA rwaciwe n’urukiko Rw’Ubujurire ku wa 18/03/2022.

Ubushinjacyaha v. Barakagwira, RPAA 00205/2020/CA rwaciwe n’urukiko Rw’Ubujurire ku wa 12/11/2021.

Ubushinjacyaha v. Habiyakare, RPAA 00013/2020/CA rwaciwe n’urukiko Rw’Ubujurire ku wa 31/12/2021.

Ubushinjacyaha v. Uwimana, RPAA 00105/2020/CA rwaciwe n’urukiko Rw’Ubujurire ku wa 30/09/2021.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi, Ubushinjacyaha burega MUSENGIMANA Oswald icyaha cyo gusambanya abana 2 b’abakobwa, buvuga ko, ku wa 08/08/2018, ari mu Mudugudu wa Marembo, Akagari ka Migendezo, Umurenge wa Cyinzuzi, Akarere ka Rulindo, afatanyije na TUYISHIMIRE utarafatwa, bashutse abana babiri U. R. na N. S. babajyana mu nzu barabakingirana, barabasambanya babasimburanaho, babikora bavugije radiyo cyane kugira ngo badatabaza hakagira ubumva, abantu baje kubatabara abaregwa banga gukingura, ahubwo TUYISHIMIRE ahita aca mu mabati aratoroka.

[2] MUSENGIMANA Oswald yaburanye ahakana icyaha aregwa, asaba kurenganurwa akagirwa umwere.

[3] Mu rubanza nº RP 00253/2018/TGI/GIC rwaciwe ku wa 29/11/2018, Urukiko Rwisumbuye rwa Gicumbi rwasanze n’ubwo MUSENGIMANA Oswald ahakana icyaha aregwa, hari ibimenyetso bifatika byerekana ko yagikoze, birimo imvugo z’abatangabuhamya bemeza ko ari we wasambanyije abana U.R. na N.S., na raporo ya Muganga igaragaza ko abo bana basambanyijwe, maze rwemeza ko ahamwa n’icyaha cyo gusambanya umwana, rumuhanisha igifungo cy’imyaka 20.

[4] MUSENGIMANA Oswald yajuririye Urukiko Rukuru, avuga ko Urukiko Rwisumbuye rwa Gicumbi rwamuhamije icyaha cyo gushuka abana, akabasambanya, rumuhanisha igifungo cy’imyaka 20 nta bimenyetso simusiga rushingiyeho, ko abo bakobwa bavuga ko yasambanyije atabazi nta n’aho yahuriye nabo, ndetse n’amasaha bavuga ko yabasambanyirijeho yari kumwe na bagenzi be mu kazi k’ubumotari, kandi ko Urukiko nta perereza urukiko rwakoze kubo yakoranaga nabo, ababyeyi n’abaturanyi ngo rumenye ukuri.

[5] Mu rubanza nº RPA 00582/2019/HC/KIG rwaciwe ku wa 30/10/2020, Urukiko Rukuru rwasanze MUSENGIMANA Oswald atarabashije kuvuguruza ibimenyetso urukiko rwabanje rwashingiyeho rumuhamya icyaha, rwemeza ko ubujurire yatanze nta shingiro bufite, ko imikirize y’urubanza rwajuririwe idahindutse.

[6] MUSENGIMANA Oswald yajuririye na none Urukiko rw’Ubujurire avuga ko Urukiko Rukuru rwamuhamije icyaha atakoze, ko nta bimenyetso bidashidikanywaho rushingiyeho, ahubwo rrwaciye urubanza rugenekereje.

[7] Uhagarariye Ubushinjacyaha avuga ko ibimenyetso inkiko zombi zashingiyeho mu guhamya icyaha MUSENGIMANA Oswald byaburanyweho ananarirwa kubivuguruza, ko nta kugenekereza mu guca urubanza kwabayeho, ko rero ubujurire bwe nta shingiro bufite.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 17/10/2022, MUSENGIMANA Oswald yunganiwe na Me RWIMO Clothilde, Ubushinjacyaha buhagarariwe na NKUSI Faustin, Umushinjacyaha ku rwego rw'Igihugu, iburanisha rirangiye bamenyeshwa ko urubanza ruzasomwa ku wa 28/10/2022, akaba ari wo munsi rusomwe.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba Urukiko Rukuru rwarahamije MUSENGAMA Oswald icyaha aregwa nta bimenyetso bidashidikanywaho rushingiyeho

- **Ku birebana n'ibimenyetso byashingiweho**

[9] MUSENGIMANA Oswald avuga ko abakobwa bivugwa ko yasambanyije atigeze ahura nabo, ko umunsi wo ku wa 08/08/2018 yiriwe i Kigali, agaruka nijoro, kandi ko hari abantu bamubonye ataha mu masaha ya saa yine.

[10] Avuga na none ko Urukiko Rukuru rwamuhamije icyaha rwirengagije ibisobanuro yatanze yerekana ko umubyeyi w'abakobwa watanze ikirego hari ibyo basanzwe bapfa bijyanye n'amashyari, kuko we ari umwana w'imfubyi uzi kwirwanaho, ahubwo rushingira ku buhamya bwatanzwe na MURWANASHYAKA Jean de Dieu butera gushidikanya, kubera ko avuga ko yumvaga induru na radiyo mu nzu, ariko ntasobanure niba abakobwa yarababonye, ko kandi ntacyari kumubuza gutabaza ngo afatirwe mu cyuho. Avuga ko ikindi gitera gushidikanya ari ukuntu abakobwa babiri basambanyirizwa icyarimwe n'umusore umwe, ko kandi n'abamukinguje nijoro nta muntu n'umwe basanze mu nzu.

[11] Akomeza avuga ko nta cyemezo cya Muganga gihari cyashingiweho n'Urukiko rumuhamya icyaha, nyamara yarasabye inzego z'ibanze ko yapimwa n'abo bakobwa bagapimwa, ariko ntibikorwe, agasanga harabayeho guca urubanza mu buryo bugenekereje.

[12] Mw'iburanisha, MUSENGIMANA Oswald yasobanuye ko we na mugenzi we TUYISHIMIRE baketse ko batewe n'abajura baje kwiba moto, uwo musore aca mu mabati, hanyuma MURWANASHYAKA Jean de Dieu wari uje kwiba amushinja ko arimo gusambanya abana kandi ntabo yamusanganye nabo.

[13] Me RWIMO Clothilde, wunganira MUSENGIMANA Oswald, avuga ko ubuhamya bwa MURWANASHYAKA Jean de Dieu budakwiriye gushingirwaho, kuko atigeze abona bariya bakobwa baturuka kwa MUSENGIMANA Oswald, kandi ko nk'umuntu uvuga ko yasanze abakobwa bavuza induru, atari guceceka, ahubwo yari kubatabariza abantu bagahurura bakabatabara.

[14] Akomeza avuga ko mu gika cya 11 cy'urubanza rujuririrwa, Urukiko rwashingiye kuri raporo za Muganga zigaragaza ko abana basambanyijwe, mu gihe atigeze yerekana ko niba harabayeho gusambanywa ari MUSENGIMANA Oswald wabikoze, nyamara byarashobokaga, kuko iyo bamupima byari kugaragaza ukuri, akaba asanga Urukiko Rukuru rwaragenekereje mu gufata icyemezo kandi bibujijwe mu manza nshinjabyaha, nk'uko biteganywa n'ingingo ya 4 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[15] Asaba Urukiko rw'Ubujurire kwemeza ko ubujurire bwa MUSENGIMANA Oswald bufite ishingiro, imikirize y'urubanza rwajuririwe igahinduka akagirwa umwere.

[16] Uhagarariye Ubushinjacyaha avuga ko ibivugwa na MUSENGIMANA Oswald ko Urukiko rwirengagije ko afite icyo asanzwe apfa n'umubyeyi w'abakobwa aregwa ko yasambanyije nta shingiro bifite, kuko mu miburanire ye avuga ko abo bakobwa atari asanzwe abazi, bikaba rero bivuze ko atari no kumenya umubyeyi wabo

[17] Ku byerekeye MURWANASHYAKA Jean de Dieu, Uhagarariye Ubushinjacyaha avuga ko ubuhamya bwe budateye gushidikanya, kuko MUSENGIMANA Oswald yumvise atabaye, ahita abwira abana ngo biruke bajye kwihisha Police itabafata ikabatwara, ko rero MURWANASHYAKA Jean de Dieu nta kuntu yari kubona abo bana kandi batari bakiri muri iyo nzu MUSENGIMANA Oswald afatanyije na TUYISHIMIRE watorotse babasambanyirijemo.

[18] Akomeza avuga ko ibivugwa na MUSENGIMANA Oswald n'umwunganira ko raporo zatanzwe na Muganga zashingiweho kandi zitagaragaza ko abo bakobwa ari we wabasambanyije nabyo nta gaciro byahabwa, kuko izo raporo ziherekejwe n'ibindi bimenyetso birimo imvugo z'abana basambanyijwe n'ubuhamya bwa MURWANASHYAKA Jean de Dieu, ndetse ko na MUSENGIMANA Oswald abazwa mu Bushinjacyaha yavuze ko mugenzi we TUYISHIMIRE bari kumwe yanyuze mu ibati agacika, uko gupfumura ibati agacika bikaba bifatwa nk'ikimenyetso simusiga gihamya ko hari ibyo yakoze yahunze gukurikiranwaho.

[19] Ku byo MUSENGIMANA Oswald avuga ko batewe n'umujura, Uhagarariye Ubushinjacyaha avuga ko nta kuri kurimo, kuko MURWANASHYAKA Jean de Dieu yamenye ikorwa ry'icyaha, asaba abo basore gufungura baranga, radiyo ivuga cyane, kugeza ubwo yashyizeho ingufuri ajya gutabaza, baje kubafata TUYISHIMIRE arahunga anyuze ku gisenge cy'inzu, hanyuma bafata MUSENGIMANA Oswald. Yibaza ahubwo impamvu TUYISHIMIRE atagiye gutabaza mu nzego z'umutekano, ahubwo akabura kugeza ubu, niba koko bari batewe n'abajura, ko kandi nta raporo y'Umudugudu ihari igaragaza ko koko ko bari bagiye kwibwa, ibyo aburanisha akaba abizanye mu rubanza kuri uru rwego, kuko ntaho yigeze abiburanisha mbere hose.

[20] Yanzura avuga ko ibimenyetso byose byashingiweho n'urukiko rwabanje byuzuzanya kandi bihamya MUSENGIMANA Oswald icyaha aregwa cyo gusambanya abana, agasaba Urukiko rw'Ubujurire kwemeza ko ubujurire bwe nta shingiro bufite, maze hakagumaho imikirize y'urubanza rwajuririwe.

UKO URUKIKO RUBIBONA

[21] Mu bujurire bwe, MUSENGIMANA Oswald agamije kugaragaza ko yahamijwe icyaha cyo gusambanya umwana habayeho kugenekereza, kuko nta kimenyetso kidashidikanywaho cyashingiweho n'Urukiko Rukuru rumuhamya icyo cyaha, agasaba ko yagirwa umwere, maze igihano cy'igifungo cy'imyaka 20 yahawe kikavanwaho.

[22] Ku byerekeye icyaha cyo gusambanya umwana, ingingo ya 4, y'Itegeko nº 69/2019 ryo ku wa 08/11/2019 ihindura ingingo ya 133 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ibikurikira: "Umuntu wese ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: 1º gushyira igitsina mu gitsina, mu kibuno cyangwa mu kanwa k'umwana; 2º gushyira urugingo urwo arirwo rwose rw'umubiri w'umuntu mu gitsina, cyangwa mu kibuno cy'umwana; 3º gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri;

Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari munsi y'imyaka makumyabiri(20) ariko kitarenze imyaka makumyabiri n'itanu (25)" (…).

Iyo umuntu mukuru asambanyije umwana uri munsi y'imyaka cumi n'ine (14), igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha

[23] Ubwo yabazwa mu Bugenzacyaha ku cyaha aregwa, MUSENGIMANA Oswald yavuze ko atacyemera. Yasobanuye ko umunsi bivugwa ko icyaha cyakorewe, yatashye saa yine z'ijoro, amaze gukaraba afungura radiyo, nyuma y'iminota 30, inkeragutabara yitwa MBIMBURE imusaba gukingura ngo bavugane, nawe amubaza icyo yifuza, amusaba kugabanya radiyo, hanyuma umuhungu babana aramutuka bagirana amakimbirane kuko yari yanyoye inzoga, arabakingirana, nuko TUYISHIME akata ibati akoresheje icyuma asanga uwakinze ntawe uhari, arakingura. Yavuze ko yashatse MBIMBURE ntamubone, haza abandi bagenzi be, TUYISHIMIRE abatera amabuye n'amacupa, Gitifu aba arahageze, ababajije abakobwa barababura, bahita babajyana ku Murenge.

[24] Yabajijwe niba asanzwe azi abo bana bamushinja ko yasambanyije, avuga ko abazi gutyo mu muhanda gusa, anavuga ko TUYISHIMIRE yacitse kubera ko yumvise Gitifu aje, bitewe n'imirwano yari yateje.

[25] Mu nkiko zabanje, MUSENGIMANA Oswald yakomeje guhakana icyaha, avuga ko abana bamushinja ko yasambanyije atabazi, ko ntaho bahuriye, ko igihe kivugwa icyaha cyakorewe yari kumwe na bagenzi be mu kazi k'ubumotari, ko kandi nta perereza urukiko rwabanje rwakoze ku bo yakoranaga nabo, ababyeyi n'abaturanyi, ko kandi atari gushuka abana b'imyaka 16 nta kintu abahaye ngo abajyane iwe, ko kandi icyaha akurikiranyweho yakirezwe n'umugabo w'umukire atazi izina wari ufite icyo apfa na se.

[26] Mu ibazwa ry'umwana U. R. wasamanyijwe, yavuze ko yari kumwe na mugenzi we N. S., ari saa kumi n'imwe, banyuze aho MUSENGIMANA Oswald acumbitse arabahamagara ngo baze ababwire, bagezeyo abafungirana mu nzu arigendera, asiga afunguye radiyo cyane, basakuza ntihagire umuntu ubumva, bigeze saa tatu z'ijoro azana n'undi, umwe abwira N. S. ngo nakuremo imyenda yose, aranga bayibakuramo ku ngufu.

[27] Yakomeje avuga ko haje abashinzwe umutekano bakingaho ingufuri barababwira ngo abo bana bararanye ni kazi kabo, baragenda basiga bavuze ngo barabisubiramo mugitondo, hanyuma TUYISHIMIRE afata icyuma apfumura ibati ararikata ahita afungura ingufuri bari bashyizeho arwana nabo, agaruka mu nzu ababwira ko nibatajya kwihisha Police iraza ikaba ari bo itwara, nuko bagira ubwoba bariruka bajya mu ishyamba bamaramo iminsi ibiri, abantu bababonye bajya kubivuga, ababyeyi babo baza kubatwara.

[28] Umwana N. S. nawe wasambanyijwe yarabajijwe mu Bugenzacyaha, avuga ko banyuze kuri MUSENGIMANA Oswald arababwira ngo baze ababwire, arabakingirana aragenda, aza kugarukana na TUYISHIMIRE nijoro babasambanaya inshuro eshatu babasimburanywaho, ko basakuzaga ntibabone ubatabara kuko radiyo yavugaga cyane.

[29] Muri dosiye hari na none inyandikomuvgo y'ibazwa rya MURWANASHYAKA Jean de Dieu mu Bugenzacyaha aho avuga ko yari ku kazi k'irondo hamwe na bagenzi be, maze bumva radiyo ivuga cyane, bumvirije bumva harimo abana b'abakobwa bataka cyane, basaba MUSENGIMANA Oswald na mugenzi we ko bakingura baranga, ahita ashyiraho ingufuri, hanyuma TUYISHIMIRE yurira hejuru akata ibati aramanuka abatera amabuye ahita akingurira abana arababwira ngo biruke, nawe aratoroka, hanyuma bafata MUSENGIMANA Oswald. Yavuze ko abo basore bitwara nabi bananiranye mu Mudugudu, kubera ko basambanya abana, bikaba bibabaje.

[30] Ababyeyi b'abo bana aribo MUSABENDE Anne Marie na MUKAKARANGWA Donata nabo barabajijwe bavuga ko abana bano basambanyijwe, ko baraye mu mashyamba, biririwa babashakisha baza kubabona, babajyana kwa Muganga.

[31] Raporo zakozwe na Muganga wazuzumye abo bana zigaragaza ko umwana U. R. ashobora kuba yarasambanyijwe, naho umwana N. S. nta karangabusugi agifite.

[32] Urukiko rurasanga abana basambanyijwe bashinja MUSENGIMANA Oswald kuba yarabajyanye iwe akabakingirana mu nzu, hanyuma akabasambanya hamwe na mugenzi we TUYISHIMIRE babanaga, uyu akaba yarabashije gutoroka abanyerondo babafatiye mu cyuho aciye mu gisenge cy'inzu, amaze no gushuka abo bana ngo bahunge Police itabafata ikabafunga, nabo bajya mu ishyamba aho baje kuboneka nyuma, nk'uko ababyeyi babo babivuga.

[33] Urukiko rurasanga ibyo MUSENGIMANA Oswald avuga ko abana bamushinja atabazi nta shingiro bifite, kuko nawe mu ibazwa rye yemeye ko abazi. N'ibyo avuga ko afitanye amakimbirane n'umubyeyi wabo nta shingiro bifite, kuko abo bana bafite ababyeyi batandukanye, kandi mbere yavugaga ko uwamufungishije ari umugabo w'umukire atazi izina wari ufite icyo apfa na se.

[34] Urukiko rurasanga kandi ibyo MUSENGIMANA Oswald avuga ko ubuhamya bwa MURWANASHYAKA Jean de Dieu bwashingiweho n'urukiko rwabanje burimo gushidikanya, ko bwateshwa agaciro nta shingiro bifite, kuko we n'abo bari kumwe ku irondo basanze icyaha gikorwa, akinga inzu, ajya gutabaza, Gitifu ahageze asanga TUYISHIMIRE yafunguye anyuze mu gisenge cy'inzu, kandi yatorokesheje abana, nk'uko nabo babivuga, bikaba rero byumvikana ko igihe MUSENGIMANA Oswald yafatwaba, abo bana ntabari bagihari, ahubwo bagiye mw'ishyamba nk'uko na none ababyeyi babo babashakishije bavuga ko ariho baje kuboneka.

[35] Urukiko rurasanga kandi ibyo MUSENGIMANA Oswald aburanisha avuga ko yasabye ko nawe Muganga amupima kugira ngo haboneke ikimenyetso cy'uko ari we wasambanyije abana, ntaho bigaragara muri dosiye ko koko yabisabye, ariko kandi n'iyo icyo kizamini gikorwa, cyari kuba ikimenyetso cyiyongera ku bindi biri muri dosiye, ariko kuba kitarakozwe, ntibyabuza ko ibimenyetso bindi bisuzumwa bigahabwa agaciro bikwiye.

[36] Ku byerekeye iperereza MUSENGIMANA Oswald avuga ko ritakozwe n'inkiko zabanje, Urukiko rurasanga atagaragaza abo ryari gukorerwaho n'icyo ryahindura ku micire y'uru rubanza mu gihe ryaba ritegetswe, bityo ntaho rwahere rurikora

[37] Urukiko rurasanga rero ibimenyetso byashingiweho n'Urukiko Rukuru ruhamya MUSENGIMANA Oswald icyaha yarezwe bihagije kandi bidashidikanywaho, bikaba byuzuzanya na raporo za Muganga zigaragaza ko abana basambanyije, bityo ubujurire bwe kuri iyi ngingo nta shingiro bufite.

- **Ku byerekeye igihano MUSENGIMANA Oswald yahawe**

[38] Ku bijyanye no gutanga ibihano, 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''.

[39] Mu manza zitandukanye zaciwe n'uru Rukiko, rushingiye ku rubanza n° RS/INCONST/SPEC 00003/2019/SC rwo ku wa 4/12/2019 haburana KABASINGA Florida no ku rubanza nº RS/INCONST/SPEC 00005/2020/CS - RS/INCONST/SPEC 00006/2020/CS rwo ku wa 12/02/2020, haburana KABASINGA Florida na NIYOMUGABO Ntakirutimana zaciwe n'Urukiko rw'Ikirenga, rwasanze nta cyabuza Umucamanza kugabanyiriza mu buryo bukwiye uwahamwe n'icyaha igihano giteganywa n'itegeko, hakurikijwe ibiteganywa n'ingingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru.

[40] Urukiko rurasanga ariko, n'ubwo MUSENGIMANA Oswald ahamwa n'icyaha cyo gusambanya abana nk'uko byemejwe n'inkiko zabanje, icyo cyaha yagikoze aribwo akiva mu bwana afite imyaka 18 y'amavuko, iyo myaka ikaba idatandukanye cyane n'iy'abana yakoreye icyaha, kuko bari bafite imyaka cumi n'itanu (15) y'amavuko, kandi nibwo bwa mbere akurikiranyweho icyaha mu buryo buzwi, izo mpamvu zombi zikaba zamubera impamvu nyoroshyacyaha zatuma agabanyirizwa igihano yahawe, kugira ngo abashe kwikosora asubire mu muryango nyarwanda abashe kugira icyo yimarira.

[41] Urukiko rurasanga rero mu rwego rwo guhuza uburemere bw'icyaha n'akamaro k'igihano, MUSENGIMANA Oswald yagabanyirizwa igihano cy'igifungo cy'imyaka makumyabiri (20) yahawe, maze agahanishwa icy'imyaka cumi n'itanu (15).

[42] Rushingiye ku ngingo z'amategeko zavuzwe haruguru, no kubisobanuro bimaze gutangwa haruguru, Urukiko rurasanga ubujurire bwa MUSENGIMANA Oswald nta shingiro bufite, urubanza yajuririye rukaba rugomba guhinduka gusa ku birebana n'igihano.

III. ICYEMEZO CY'URUKIKO

[43] Rwemeje ko ubujurire bwa MUSENGIMANA Oswald nta shingiro bufite;

[44] Rwemeje ko urubanza nº RPA 00582/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 30/10/2020 ruhindutse gusa ku birebana n'igihano;

[45] Rutegetse ko MUSENGIMANA Oswald ahanishijwe igifungo cy'imyaka cumi n'itanu (15) ku cyaha cyo gusambanya umwana yahamijwe muri urwo rubanza;

[46] Ruvuze ko amafaranga y'amagarama y'urubanza aherera ku Isanduku ya Leta, kubera ko MUSENGIMANA Oswald afunze, akaba asonewe kuyatanga.