UBUSHINJACYAHA v. NSENGIMANA

[Rwanda URUKIKO RW'UBUJURIRE - RPAA 00410/2021/CA (Munyangeri, P.J.) 28 Ukwakira 2022]

Amategeko agenga imanza z'inshinjabyaha – Ibikorwa bigize icyaha cyo gusambanya umwana - Gukora imibonano mpuzabitsina ntibigomba kwitiranywa n'igikorwa cyo kwinjiza igitsina cy'umugabo mu gitsina cy'umugore, kuko nk'uko biteganywa n'itegeko, hari ibikorwa bikorerwa ku mwana bifatwa ko ari ukumusambanya bitabaye ngombwa kwinjiza igitsina mu kindi.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha burega Nsengimana Eric icyaha cyo gusambanya umwana witwa Uwizeyimana Claudette ufite imyaka 8 y'amavuko, amuha 500 Frw yo kugura irindazi. Uregwa yaburanye ahakana icyaha avuga ko bamubeshyera, Urukiko rwemeza ko adahamwa n'icyaha cyo gusambanya umwana, rutegeka ko ahita arekurwa. Ubushinjacyaha bwajuririye icyo cyemezo mu Rukiko Rukuru, buvuga ko Urukiko rwagize umwere Nsengimana Eric rwirengagije ibimenyetso rwagaragarijwe, bigaragaza ko umwana yagize ihungabana ku gitsina, kandi yari yiriranywe n'uregwa, uyu na we akaba adahakana ko yari kumwe n'umwana. Urukiko Rukuru rwemeje ko uregwa ahamwa n'icyaha cyo gusambanya umwana w'imyaka umunani (8) rumuhanisha igifungo cya burundu.

Nsengimana yajuririye icyo cyemezo mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru rwaciye urubanza rugenekereje nta n'ibimenyetso rushingiyeho, asobanura ko yari acumbitse mu gipangu cya Museruka Jean Damascene (ise w'umwana bivugwa ko yasambanyije), agurira amandazi abandi bana Uwizeyimana Claudette adahari, baza kumuratira, bukeye amubaza impamvu we atamuguriye, amuha 500 Frw yo kugura indazi, amugarurira 400 Frw, ko ariko mu gihe umwana yagarukaga mu rugo, yageze hafi yarwo atangira kurira, Nsengimana amubaza icyo abaye, ise yitanguranwa amubwira ko ashaka gutunga umugore we n'uwo mwana (asobanura ko yaje kumenya ko ise w'uwo mwana yirirwaga avuga ko Nsengimana asambanya nyina w'uwo mwana), ko nyuma yo kumva ayo magambo, Nsengimana we ubwe yahise yijyana ku Bugenzacyaha kugira ngo akurikiranwe ukuri kugaragazwe, ajyanwa kwa muganga baramusuzuma n'umwana arasuzumwa, muganga wapimye Nsengimana agaragaza ko uwo munsi atakoze imibonano mpuzabitsina kandi koko ko ariko byari bimeze, kubera ko umugore we yari amaze igihe arwaje mukuru we, ngo akaba nta n'undi mugore yari yakorana na we imibonano mpuzabitsina. Mu iburanisha Ubushinjacyaha bwavuze ko ibyo Nsengimana Eric avuga nta gaciro byahabwa, kubera ko yumvise nabi isesengura ry'Urukiko, kubera ko rwagiye rugaragaza kandi rusesengura ibimenyetso bimuhamya icyaha, ko kuba Nsengimana Eric avuga ko nta kimenyetso gishya Ubushinjacyaha bwatanze, ari ukwigiza nkana kuko hari test ADN yakoreshejwe kandi yemeza ko amasohoro yasanzwe mu mwana ahura na ADN za Nsengimana Eric nk'uko byagaragajwe na Raporo yo ku wa 03/05/2019 yakozwe n'inzobere mu gupima ADN.

Incamake y'icyemezo: Gukora imibonano mpuzabitsina ntibigomba kwitiranywa n'igikorwa cyo kwinjiza igitsina cy'umugabo mu gitsina cy'umugore, kuko nk'uko biteganywa n'itegeko, hari ibikorwa bikorerwa ku mwana bifatwa ko ari ukumusambanya bitabaye ngombwa kwinjiza igitsina mu kindi. Bityo Nsengimana Eric akaba ahamwa n'icyaha cyo gusambanya umwana n'ubwo yaba atarinjije igitsina cye mucy'umwana.

Ubujurire nta shingiro bufite,
Urubanza rwajuririwe ruhindutse kubirebana n'igihano gusa.

Amategeko yakoreshejwe:

Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 107

Itegeko n˚ 69/2019 ryo ku wa 08/11/2019 rihindura itegeko n˚ 68/2018 ryo ku wa 30/08/2018 ritegenaya ibyaha n'ibihano muri rusange, ngingo ya 4.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha burega Nsengimana Eric icyaha cyo gusambanya umwana, buvuga ko yabonywe asohotse mu nzu ari kumwe n'umwana witwa Uwizeyimana Claudette ufite imyaka 8 y'amavuko, amuha 500 Frw yo kugura irindazi, se w'umwana amubonye amubaza ikimurijije amubwira ko ari Nsengimana Eric (bita Papa Keza) umufashe, yagize impungenge aramureba amusangaho amasohoro ku ikariso yari yambaye no ku bibero. Nsengimana Eric yaburanye ahakana icyaha avuga ko bamubeshyera.

[2] Mu rubanza n˚ RP 00667/2018/TGI/GSBO rwaciwe ku wa 07/12/2018, Urukiko rwemeje ko Nsengimana Eric adahamwa n'icyaha cyo gusambanya umwana, rutegeka ko ahita arekurwa, kukio rwasanze kuba Nsengimana Eric yemera ko yahaye umwana amafaranga yo kugura irindazi ndetse hakaba amasohoro basanze ku ikariso y'umwana, ibyo bitaragaragarijwe ibimenyetso uretse Museruka Jean Damascēne uvuga ko yayabonye kandi na raporo ya muganga igaragaza ko Uwizeyimana Claudette afite ibimenyetso by'ihungabana ku myanya ndangagitsina (traumatisme physique), ibyo bitafatwa nk'ikimenyetso cya kamarampaka gihamya ko Nsengimana Eric yasambanyije uwo mwana kuko bishidikanywaho.

[3] Ubushinjacyaha bwajuririye icyo cyemezo mu Rukiko Rukuru, buvuga ko Urukiko rwagize umwere Nsengimana Eric rwirengagije ibimenyetso rwagaragarijwe, bigaragaza ko umwana yagize ihungabana ku gitsina, kandi yari yiriranywe n'uregwa, uyu na we akaba adahakana ko yari kumwe n'umwana.

[4] Mu rubanza n˚ RPA 00019/2019/HC/KIG rwaciwe ku wa 10/10/2019, rwaburanishijwe Nsengimana Eric adahari, Urukiko Rukuru rwemeje ko Nsengimana Eric yasambanyije umwana w'imyaka umunani (8) witwa Uwizeyimana Claudette, rumuhanisha igifungo cya burundu.

[5] Nsengimana Eric yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, ubujurire bwe bwandikwa kuri n˚ RPAA 00410/2021/CA, avuga ko Urukiko Rukuru rwaciye urubanza rugenekereje nta n'ibimenyetso rushingiyeho.

[6] Urubanza rwaburanishijwe mu ruhame ku wa 08/09/2022, Nsengimana Eric yunganiwe na Me Unejumutima Aphrodice, Ubushinjacyaha buhagarariwe na Harindintwari Côme, Umushinjacyaha ku rwego rw'Igihugu, isomwa ry'urubanza rishyirwa ku wa 23/09/2022, ryimurirwa ku wa 30/09/2022.

[7] Mu rubanza rubanziriza urundi rwaciwe ku wa 30/09/2022, Urukiko rwemeje ko hatumizwa Dr Uwimbabazi Clémentine wasuzumye Nsengimana Eric kugira ngo asobanure raporo yakoze ku wa 10/05/2022, na Dr Hakizimana François Xavier wasuzumye Uwizeyimana Claudette kugira ngo asobanure raporo yakoze ku wa 10/07/2022.

[8] Iburanisha ry'urubanza ryapfunduwe ku wa 13/10/2022, Nsengimana Eric yunganiwe na Me Unejumutima Aphrodice, Ubushinjacyaha buhagarariwe na Harindintwari Côme, Umushinjacyaha ku rwego rw'Igihugu, uwo munsi hitaba kandi Dr Uwimbabazi Clémentine na Dr Hakizimana François Xavier, basobanura raporo bakoze.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

- **Kumenya niba Nsengimana Eric yarahamijwe icyaha, hadashingiwe ku bimenyetso bidashidikanywaho**

[9] Nsengimana Eric yajuriye avuga ko imvugo y'Ubushinjacyaha itagombaga gushingirwaho mu kumuhamya icyaha kuko nta kuri kuyirimo, ndetse nta n'ibimenyetso bugaragaza. Kuba Urukiko ruhindura rukavuga ko yemereye kwa muganga ko umwana yaje amusanga maze akamurangirizaho, avuga ko atari byo, ko ahubwo ari ikinyoma cyahimbwe n'Ubushinjacyaha, kuko muganga we yemeje ko nta mibonano mpuzabitsina yakoze uwo munsi, asaba kurenganurwa akagirwa umwere.

[10] Nsengimana Eric asobanura ko yari acumbitse mu gipangu cya Museruka Jean Damascēne (ise w'umwana bivugwa ko yasambanyije), agurira amandazi abandi bana Uwizeyimana Claudette adahari, baza kumuratira, bukeye amubaza impamvu we atamuguriye, amuha 500 Frw yo kugura indazi, amugarurira 400 Frw, ko ariko mu gihe umwana yagarukaga mu rugo, yageze hafi yarwo atangira kurira, Nsengimana Eric amubaza icyo abaye, ise yitanguranwa amubwira ko ashaka gutunga umugore we n'uwo mwana (asobanura ko yaje kumenya ko ise w'uwo mwana yirirwaga avuga ko Nsengimana Eric asambanya nyina w'uwo mwana), ko nyuma yo kumva ayo magambo, Nsengimana Eric yahise yijyana ku Bugenzacyaha kugira ngo akurikiranwe kuri kugaragazwe, ajyanwa kwa muganga baramusuzumwa n'umwana arasuzumwa, muganga wapimye Nsengimana Eric agaragaza ko uwo munsi atakoze imibonano mpuzabitsina kandi koko ko ariko byari bimeze, kubera ko umugore we yari amaze igihe arwaje mukuru we, ngo akaba nta n'undi mugore yari yakorana na we imibonano mpuzabitsina.

[11] Nsengimana Eric avuga kandi ko raporo yakozwe na Dr Hakizimana François Xavier ishidikanywa, kubera ko bitumvikana ukuntu yaba yaremeje ko yabonye amasohoro mu gitsina cy'umwana kandi uwamusuzumye mbere yaremeje ko yasanze adaheruka gukora imibonano mpuzabitsina, asaba kurenganurwa akagirwa umwere.

[12] Me Unejumutima Aphrodice avuga ko ibimenyetso Ubushinjacyaha bwatanze bidakwiye guhabwa ishingiro, kuko se w'umwana uvuga ko uregwa yahaye umwana amafaranga ariko akaba ataragaragajwe, byongeye akaba ari nta muntu wabonye uregwa ari gusambanya uwo mwana. Asanga kandi kuvuga ko umwana yagize ihungabana ku gitsina bidahagije ku buryo byahamya Nsengimana Eric icyaha kuko bishobora guterwa n'ibintu byinshi, birimo n'imyenda umwana yaba yambaye, ahubwo kuba se w'umwana yaravuze ko yabonye amasohoro ku ikariso y'umwana no ku bibero bye kandi akaba yarajyanywe kwa muganga, bikaba byari kuba byiza iyo raporo ya muganga iba igaragaza ko ayo masohoro ari yo koko kandi ari aya Nsengimana Eric, asaba ko uwo yunganira yagirwa umwere kuko nta cyaha yakoze.

[13] Akomeza avuga ko bitumvikana ukuntu amasohoyo yaba yarabonetse mu gitsina cy'umwana ari aya Nsengimana Eric, mu gihe umwana wasuzumwe ku wa 10/07/2018, hashize amezi agera kuri abiri bivugwa ko Nsengimana Eric akoze icyaha akurikiranyweho, kandi ko byibuze AND za Nsengimana Eric zari kuboneka mu ntoki kubera ko ari zo zaba zarakoreshejwe mu giha Uwizeyimana Claudette amafaranga yo kugura irindazi. Asaba Urukiko kugereranya raporo zakozwe n'abaganga babiri batandukanye, rugaha uwo yunganira ubutabera.

[14] Ubushinjacyaha buvuga ko ibyo Nsengimana Eric avuga nta gaciro byahabwa, kubera ko yumvise nabi isesengura ry'Urukiko, kubera ko rwagiye rugaragaza kandi rusesengura ibimenyetso bimuhamya icyaha, ko kuba Nsengimana Eric avuga ko nta kimenyetso gishya Ubushinjacyaha bwatanze, ari ukwigiza nkana kuko hari test ADN yakoreshejwe kandi yemeza ko amasohoro yasanzwe mu mwana ahura na ADN za Nsengimana Eric.

[15] Ubushinjacyaha bukomeza buvuga ko raporo ya expertise ya ADN ari yo igomba guhabwa ishingiro kandi ko ari yo yuzuye (yakozwe ku wa 10/07/2018), ko kuba Dr Hakizimana François Xavier ari ″médecin légistre″, ari we ufite ubumenyi kuruta Dr Uwimbabazi Clémentine, kuko we we afite ubumenyi bwihariye (spécialiste) muri ibyo bintu, na ho Dr Uwimbabazi Clémentine akaba afite ubumenyi rusange (généraliste). Busobanura ko muganga yasuzumye bwa mbere uwo mwana, bafata ibipimo (sample) byo kuzifashisha mu gupima ADN, bamusubizayo kwa muganga bwa kabiri kugira ngo bahuze ibimenyetso byafashwe (swabs) bya Nsengimana Eric n'ibya Uwizeyimana Claudette, kugira ngo bahuze izo ADN zose, kandi ko ibintu byakoreshejwe mu gupima umuntu bidatakara, cyane cyane iyo byakozwe n'umuganga w 'inzobere.

[16] Ubushinjacyaha buvuga kandi ko mu Rukiko Rukuru, umucamanza yasesenguye raporo ya muganga yakozwe na Dr Uwimbabazi Clémentine ku wa 10/05/2018, igaragaza ko Nsengimana Eric atakoze imibonano mpuzabitsina, rusanga iyo raporo ivuguruzwa n'iyakozwe n'inzobere zapimye ADN hifashishijwe amasohoro yafashwe bavanye mu gitsina cy'umwana, aho bagaragaje ko ari aya Nsengimana Eric, (From a forensic point view there is no doubt that the male DNA that was detected on the swabs that taken on victim Uwizeyimana Claudette is from the suspect Nsengimana Eric), ko ibyo bigaragaza nta gushidikanya ko umwana Uwizeyimana Claudette yasambanyijwe na Nsengimana Eric nk'uko byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza n˚ RPAA 0054/10/CS rwo ku wa 30/06/2011 hagati y'Ubushinjacyaha na Kambanda Hussein, aho rwavuze ko uwo ibipimo byakozwe mu buryo bwuzuye byagaragaje ko ADN ari ize, adashobora kuzihakana, kandi ko test ya ADN yakozwe, yagaragaje ko amasohoro yasanzwe kuri Uwimbabazi Claudette ari aya Nsengimana Eric.

[17] Dr Uwimbabazi Clémentine wasuzumye Nsengimana Eric avuga ko umugenzacyaha yari yamuhaye inshingano zo gusuzuma niba hari imibonano mpuzabitsina yakoze uwo munsi, no kugaragaza niba hari indwara zandurira mu mibonano mpuzabitsina yaba arwaye. Asobanura ko muri raporo y'isuzuma yakoze ku wa 10/05/2018, yagaragajemo ko yakoze isuzuma ryo kurebesha amaso (examen physique), abona ko Nsengimana Eric adasiramuye,ko igitsina cye gihinduye ibara, nta kintu kidasanzwe cyari ku myanya ye inyuramo inkari, afata ibindi bizamini bipimirwa muri laboratwari, ibisubizo byo muri laboratwari biza bigaragaza ko nta bwandu bw'agakoko gatera sida afite, nta mitezi afite, nta bwandu bwa hepatite afite, ko yahuje ibyavuye mu isuzuma ryo kurebesha amaso n'ibisubizo byavuye muri laboratwari, asanga nta mibonano mpuzabitsina Nsengimana Eric yari yakoze uwo munsi, nta n'indwara zandurira mu mibonano mpuzabitsina arwaye.

[18] Akomeza asobanura ko ushobora kwemeza ko amasohoro ari ay'umugabo runaka mu gihe wayapimye, ko iyo upimye igitsina cy'umugabo ukabonaho selire z'undi muntu, izo selire zitari ize ziba zimuriho, zituma ufata umwanzuro wo kwemeza ko yakoze imibonano mpuzabitsina, kubera ko byumvikanisha ko nta handi hantu izo selire zaba zaturutse, kandi ko we atafashe ikizamini cyo gupima amasohoro kubera ko hari mugenzi we wari wasabwe gukora ikizamini k'uwahohotewe.

[19] Dr Hakizimana François Xavier wapimye Uwizeyimana Claudette bivugwa ko yasambanyijwe, asobanura ko habaye kwibeshya ku itariki igaragara mu nyandiko yakoreyeho raporo, ko itariki nyayo yayikoreyeho ari iya 10/05/2018, aho kuba ku wa 10/07/2018. Asobanura ko yari yahawe amakuru ko amasohoro y'uwasambanyije umwana yari ku mubiri we, ni bwo yafataga ibyo bavugaga ko ari amasohoro abishyira ku kantu kameze nk'agati (tige) bakoresha mu

gupima, abyohereza muri Rwanda Forensic Laboratory ngo bipimwe, hagaragazwe niba hari aho bihuriye n'uwo bivugwa ko yari yamusambanyije.

[20] Akomeza asobanura ko urebesheje amaso, nta kintu kidasanzwe uzabona ku mugabo cyagaragaza ko yakoze imibonano mpuzabitsina, ko wabimenya ari uko ukoresheje ibizamini bya laboratwari, ko ibyo bagiye gupimisha babikuye haruguru gato y'igitsina cy'uwo mwana, ku mayasha no ku itako, kandi ko aheruka yohereza icyo kizamini kuri Rwanda Forensic Laboratory, ibyakurikiyeho akaba atabizi, ku buryo atamenya niba hari raporo ivuga ko ADN iri mu bipimo byafashwe ihuye n'amasohoro y'uregwa. Avuga kandi ko mu isuzuma yakoreye Uwimbabazi Claudette arebesha amaso, yabonye ko umwana yari afite ″traumatisme physique" (amaraso yasaga n'ayipfunditse ahantu ku gitsina).

UKO URUKIKO RUBIBONA

[21] Ingingo ya 4, igika cya mbere y'itegeko n˚ 69/2019 ryo ku wa 08/11/2019 rihindura itegeko n˚ 68/2018 ryo ku wa 30/08/2018 ritegenaya ibyaha n'ibihano muri rusange iteganya ko" Umuntu wese ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: 1˚ gushyira igitsina mu gitsina , mu kibuno cyangwa mu kanwa k'umwana; 2˚ gushyira urugingo ari rwo rwose rw'umubiri w'umuntu mu gitsina, cyangwa mu kibuno cy'umwana; 3˚ gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri″. Igika cya kabiri cy'iyi ngingo y'itegeko iteganya ko" Iyo umuntu mukuru asambanyije umwana uri munsi y'imyaka cumi n'ine (14), igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha".

[22] Ingingo ya 107, igika cya gatatu, y'itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko "Icyakora, iyo icyaha cyabonewe ibimenyetso bikigaragaza, ugikurikiranyweho cyangwa umwunganira ashobora kwerekana impamvu zose yireguza, zerekana ko ikirego kitakwemerwa, zihamya ko icyo aregwa atari icyaha cyangwa se ko ari umwere n'izindi mpamvu zose zivuguruza izimuhamya icyo cyaha".

[23] Dosiye y'urubanza igaragaza inyandikomvugo y'ibazwa rya Musekura Jean Damascēne yakorewe mu Bugenzacyaha ku wa 10/05/2022, asobanura hura n'umwana Uwizeyimana Claudette asohotse mu nzu kwa Nsengimana Eric arimo arira, uyu amufashe ukuboko, umwana acigatiye inoti ya 500 Frw, amubajije impamvu arimo kurira amubwira ko papa Keza (Nsengimana Eric) amaze kumufata, nib wo yagenzuraga umwana abona amasohoro ku gitsina cye no ku matako, agira umujinya akubita Nsengimana Eric urushyi, amusaba ko bajya kuri RIB bahita bagenda. Asobanura ko yasanze umugore wa Nsengimana Eric yagiye ku muhanda, abandi bana be bagiye ku ishuri, na ho umugore we (wa Musekura) ari mu nzu aryamishije umwana muto, ko rero yahengereye asa n'uri mu gipangu wenyine akaba ari bwo asambanya uwo mwana, kandi ko yababwiye ko atasambanyije uwo mwana, ahubwo yakoreye inyuma.

[24] Hari inyandikomvugo y'ibazwa yakorewe mu Bugenzacyaha ku wa 10/05/2018, Nsengimana Eric asobanura ko umwana Uwizeyimana Claudette yamusanze mu nzu acumbitsemo, amusaba kumugurira irindazi yamwemereye, yisatse abura igiceri amuha inoti ya 500 Frw ngo ajye kugura irindazi amugarurire asigara, ko mu gusohoka yari amufashe akaboko, ahura na se w'uwo mwana amubaza aho akuye ayo mafaranga, amubwira ko ari papa Keza umuguriye irindazi, ise w'uwo mwana ashaka kumutemesha umuhoro umugore we na nyina w'uwo mwana baritambika, amukubita ikibatira avuga ngo yamusambanyirije umwana. Avuga ko umwana yaje iwe umugore we yagiye gukoresha urukweto ariko ahita agaruka, na ho umugore wa Museruka Jean Damascēne akaba yari mu nzu, kandi ko inzu zabo zari zegeranye.

[25] Hari raporo y'umuganga wasuzumye Uwizeyimana Claudette (Dr Hakizimana François Xavier) ku wa 10/05/2018, igaragaza ko umwana afite ibimenyetso bya "traumatisme physique" ku myanya ndangagitsina, kandi ko yafashe ibipimo bizifashishwa mu gupima ADN, bikaba bibitswe n'umupolisi wa Isange One Stop Center.

[26] Raporo y'umuganga wasuzumye Nsengimana Eric (Dr Uwimbabazi Clémentine) ku wa 10/05/2018, igaragaza ko nta mibonano mpuzabitsina yari yakoze uwo munsi, ndetse nta n'indwara zandurira mu mibonano mpuzabitsina arwaye.

[27] Inyandikomvugo y'ibazwa yakorewe mu Bugenzacyaha ku wa 15/05/2018, Nsengimana Eric ahakana icyaha. Asobanura ko acumbitse mu nzu ya Museruka Jean Damascēne, ko yahaye umwana Uwizeyimana Claudette inoti ya 500 Frw ngo ajye kugura irindazi amugarurire amafaranga asigaye, mu kugenda agahura na se akamubaza aho agiye, amubwira ko papa Keza amutumye irindazi, ahita akubita uwo mwana urushyi, Nsengimana Eric aza kumusobanurira ko ari we umutumye, ni ko guhita amubwira ku amusambanyirije umwana, aratabaza abantu baraza bamushyikiriza Ubugenzacyaha. Avuga ko nta makimbirane asanzwe agirana na se w'uwo mwana, ko ariko hari igihe bashwana yatinze kumwishyura amafaranga y'ubukode, yamara kumwishyura bikarangira.

[28] Raporo y'abahanga mu ishakisha n'ifata ry'ibimenyetso by'amasohoro muri Rwanda Forensic Laboratory yo ku wa 24/01/2019, igaragaza ko bamaze gukora isuzuma ry'ibimenyetso by'amasohoro kuri "Swabs" zafashwe ku itako rya Uwizeyimana Claudette bashyikirijwe, basanze kuri "Swabs" zafashwe ku itako rya Uwizeyimana Claudette bashyikirijwe, hariho amasohoro. Bemeje kandi ko ibimenyetso byafashwe binabikwa neza kugira ngo bizifashishwe mu gupima ADN.

[29] Raporo yo ku wa 03/05/2019 yakozwe n'inzobere mu gupima ADN, igaragaza ko ADN iri mu bimenyetso byafashwe ku itako rya Uwizeyimana Claudette, ihuye na ADN ya Nsengimana Eric.

[30] Mu gufata icyemezo cyo guhamya Nsengimana Eric icyaha cyo gusambanya umwana mu rubanza n˚ RPA 00019/2019/HC/KIG, Urukiko Rukuru rwasanze isesengura ryakozwe n'Urukiko Rwisumbuye harimo kwivuguruza, kuko rwavuze ko ibivugwa na Musekura Jean Damascēne wahamije ko yabonye amasohoro ku mwana we, Urukiko rwo rukavuga ko uretse kubivuga gusa, nta cyo abishingiraho, nta kuri kurimo, cyane ko n'iyo hatagaragazwa aya masohoro, raporo ya muganga yo ubwayo yagaragaje ko umwana yahohotewe nyamara Urukiko rurabyirengagiza. Rwasobanuye ko kuba Nsengimana Eric yemera ko yari kumwe n'umwana bivugwa ko yasambanyije, ibyo ubwabyo ari ikimenyetso kimwe cyagombaga kunganirwa n'ibindi harimo imvugo ya se w'umwana, raporo ya muganga yemeza ko umwana yari afite ibimenyetso by'ihungabana ku myanya ndangagitsina (Traumatisme physique), rushingira kandi kuri raporo yakozwe n'inzobere zikorera muri Rwanda Forensic Laboratory, yemeza ko ADN iri mu masohoro yafashwe kuri Uwizeyimana Claudette, ihura na ADN ya Nsengimana Eric.

[31] Urukiko rw'Ubujurire rurasanga ikidashidikanywaho, ari uko Nsengimana Eric yigeze kuba ari mu nzu ye kandi ari kumwe n'umwana Uwizeyimana Claudette bonyine. Rurasanga aho Nsengimana Eric avuga ko yumvise umwana arimo kurira avuye kugura irindazi, na ho Museruka Jean Damascēne (se w'umwana) akavuga ko yabonye umwana asohoka mu nzu kwa Nsengimana Eric amufashe akaboko, yamupfumbatije inoti y'amafaranga magana atanu (500 Frw), umwana yamubona agahita arira, izi mvugo zombi zihujwe n'ibyakurikiyeho, bigaragara ko ibyo Nsengimana Eric avuga nta kuri kurimo.

[32] Urukiko rw'Ubujurire rurasanga kandi, ibisobanuro byatanzwe na Museruka Jean Damascēne wavuze ko yabonye ibintu bimeze nk'amasohoro ku bibero no ku ikariso ya Uwizeyimana Claudette, byashimangiwe na raporo y'inzobere mu gupima amasohoro zikorera muri Rwanda Forensic Laboratory, zemeje koko ko ibimenyetso byafashwe kuri Uwizeyimana Claudette, zasanze ari amasohoro, ibi kandi byanahuzwa no kuba Museruka Jean Damascēne yarasobanuye mu Bugenzacyaha ko umwana we amaze kuvuga ko papa Keza (Nsengimana Eric) yamufashe, Nsengimana Eric yemeye ko yakoreye inyuma, byanahuzwa n'indi raporo y'inzobere yemeje ko ADN iri mu masohoro yafashwe kuri Uwizeyimana Claudette, ihuye na ADN ya Nsengimana Eric, ibi bimenyetso byose bigaragaza nta shiti ko Nsengimana Eric yakoze icyaha cyo gusambanya umwana.

[33] Ku birebana n'aho Nsengimana Eric avuga ko umuganga wamusuzumye yemeje ko nta mibonano mpuzabitsina aheruka gukora kandi koko na we akaba azi ko atari aheruka guhura n'umugore we, nk'uko byasobanuwe na Dr Hakizimana François Xavier, yavuze ko utareba umugabo n'amaso yawe ngo upfe kumenya ko yakoze imibonano mpuzabitsina, ko hagomba kwifashishwa ibizamini bya laboratwari kandi koko Dr Uwimbabazi Clēmentine wasuzumye Nsengimana Eric, yasobanuye ko nta kizamini yohereje muri laboratwari cyo gupima niba Nsengimana Eric aheruka gukora imibonano mpuzabitsina, ahubwo ibyo yohereje muri laboratwari ari ibyo gupima niba afite indwara zandurira mu mibonano mpuzabitsina.

[34] Urukiko rurasanga kandi hadakwiye kwitiranywa gukora imibonano mpuzabitsina nk'igikorwa cyo kwinjiza igitsina cy'umugabo mu gitsina cy'umugore, kuko nk'uko byasobanuwe haruguru, hari ibikorwa biteganywa n'itegeko bikorerwa ku mwana bifatwa ko ari ukumusambanya, bitabaye ngombwa kwinjiza igitsina mu kindi, ibi bikaba byumvikanisha ko no gutsirita igitsina ku mubiri w'umwana ubwabyo, byitwa gusambanya umwana.

[35] Urukiko rushingiye ku ngingo z'amategeko zavuzwe haruguru no ku bisobanuro bitanzwe, rurasanga icyaha cyo gusambanya umwana Nsengimana Eric akurikiranyweho kimuhama akaba agomba kugihanirwa, ingingo y'ubujurire yatanze ikaba nta shingiro ihawe.

[36] Ku bijyanye n'igihano ariko, Urukiko rw'Ubujurire rurasanga, nubwo icyaha gihama Nsengimana Eric kiremereye, hari impamvu nyoroshyacyaha zashingirwaho akagabanyirizwa igihano, zirimo kuba ari ubwa mbere akoze icyaha bizwi, akaba nta handi yagaragajwe nk'umuntu usanzwe witwara nabi mu muryango nyarwanda, akaba ahanishijwe igifungo cy'imyaka kibarwa mu gihe, yaba abonye amahirwe yo kongera kwitekerezaho akikosora, akazasubira mu muryango nyarwanda yaragororotse, bityo aho guhanishwa igifungo cya burundu yari yahawe, agahanishwa igifungo cy'imyaka cumi n'ibiri (12).

III. ICYEMEZO CY'URUKIKO

[37] Rwemeje ko ubujurire bwa Nsengimana Eric, nta shingiro bufite;

[38] Rwemeje ko urubanza n˚ RPA 00019/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 10/10/2019, ruhindutse ku birebana n'igihano;

[39] Ruhanishije Nsengimana Eric igifungo cy'imyaka cumi n'ibiri (12);

[40] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta, kubera ko Nsengimana Eric aburana afunze.