UBUSHINJACYAHA v. NDAYIZEYE

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00135/2020/CA - (Rugabirwa), 28 Mutarama 2021]

Amategeko agenga imanza z'inshinjabyaha, – Ukwemera icyaha – Ukwemera icyaha mu buryo budashidikanywaho – Ukwemera icyaha mu buryo budashidikanywaho ntabwo byashingirwaho ngo uwemeye agabanyirizwe igihano, mu gihe atabikoze mbere yo gukurikiranwa cyangwa mu ntangiriro z'iburanisha ku rwego rwa mbere.

Amategeko agenga imanza z'inshinjabyaha – Ukwemera icyaha – Kwemera icyaha bwa mbere ku rwego rw'ubujurire – Ukwemera icyaha mu buryo budashidikanywaho bikozwe bwa mbere mu rwego rw'ubujurire hagamijwe ko uregwa agabanyirizwsa igihano, ntabwo bifatwa nk'impamvu y'ubujurire kuko ntacyo aba anenga imikirize y'urubanza rwajuririwe.

Amategeko agenga imanza z'inshinjabyaha –Igihano – Ntabwo umucamanza ategetswe kugabanya igihano byanze bikunze ku wemeye icyaha, mu gihe asanga icyaha cyarakoranwe ubugome bukabije

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Ubushinjacyaha bukurikiranyeho Ndayizeye icyaha cy'ubwicanyi, buvuga ko ku wa 13/12/2017 saa mbiri za mu gitondo, mu gashyamba k'ahitwa i Nyamagana, mu Karere ka Ruhango, hasanzwe umurambo wa Mutatsimpundu wari warabyaranye na Ndayizeye ubwo yamukoreraga akazi k'ubucuruzi, uyu murambo ukaba wari umanitse mu giti, hafi y`aho umurambo wari umanitse hari udukingirizo tubiri dupfunduye, ku ikubitiro haketswe ko nyakwigendera yishwe na Ndayizeye kuko akimara ku mutera inda yahise amwirukana ku kazi ngo bitamuteza ikibazo mu rugo, aho abyariye nabwo akajya ajya kumureba iwe ngo amuhe ibitunga uwo mwana. Urwo Rukiko rwasanze Ndayizeye ahamwa n'icyaha aregwa rumuhanisha igifungo cya burundu.

Ndayizeye yajuririye imikirize y'urubanza mu Rukiko Rukuru Urugereko rwa Nyanza, avuga ko mu rubanza yajuririye, Urukiko rwirengagije yibisobanuro yatanze by'uko ntaho ahurira n`urupfu rwa Mutatsimpundu Thacienne kuko nyuma yo guhura aje kumwaka igikoma cy`umwana uyu yahise ataha, avuga kandi ko urwo Rukiko rwahaye agaciro ubuhamya bwatanzwe kandi yari yagaragaje ko butavugisha ukuri. Urwo Rukiko rwasanze ubujurire bwa Ndayizeye nta nshingiro bufite, ruhamishaho imikirize y'urubanza rwajuririwe.

Ndayizeye yongeye kujuririra Urukiko rw'Ubujurire, avuga ko yahamijwe icyaha atakoze, ariko mu mwanzuro w'inyongera avuga ko yemera icyaha akagisabira imbabazi, asaba ko yagabanyirizwa igihano.

Uhagarariye Ubushinjacyaha avuga ko Ndayizeye adakwiye kugabanyirizwa igihano kubera impamvu zikurikira: kuba atemeye icyaha mu buryo bwuzuye, kuko avuga ko ibyamubayeho byamugwiririye, nyamara yari yarabiteguye anabishyira mu bikorwa; kuba atarakuyeho icyo yise urujijo kuko nta gishya yazanye mu bujurire bwa kabiri, kubera ko n'ubundi yemeye icyaha yahamijwe hashingiwe ku bimenyetso biri muri dosiye atigeze avuguruza; kuba ataremeye icyaha mbere yo gukurikiranwa, cyangwa igihe yaburanaga mu Rukiko Rwisumbuye no mu Rukiko Rukuru no kuba icyaha yakoze yaragikoranye ubugome bw'indengakamere, aho yabanje

gusambanya Mutatsimpundu bakoranaga ndetse banabyaranye umwana, umurambo we akawuhambira ku giti akigendera.

Incamake y'icyemezo: 1. Ukwemera icyaha mu buryo budashidikanywaho, ntabwo byashingirwaho ngo uwemeye agabanyirizwe igihano, mu gihe atabikoze mbere yo gukurikiranwa cyangwa mu ntangiriro z'iburanisha ku rwego rwa mbere.

Ukwemera icyaha mu buryo budashidikanywaho bikozwe bwa mbere mu rwego rw'ubujurire hagamijwe ko uregwa agabanyirizwsa igihano, ntabwo bifatwa nk'impamvu y'ubujurire kuko mu by'ukuri ntacyo aba anenga imikirize y'urubanza rwajuririwe.

Ntabwo umucamanza ategetswe kugabanya igihano byanze bikunze ku wemeye icyaha, mu gihe asanga icyaha cyarakoranwe ubugome bukabije.

Ubujurire nta nshingiro bufite.

Amategeko yashingiweho:
Itegeko nº 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.
Itegeko - Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga.

Imanza zashingiweho:
Urubanza n° RPA 0047/11/CS, Ubushinjacyaha v Nshutirakiza, rwaciwe n'Urukiko rw'Ubujurire ku wa 27/03/2015.

Nta nyandiko z'abahanga :

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwareze NDAYIZEYE William , mu Rukiko Rwisumbuye rwa Muhanga, bumukurikiranyeho icyaha cy'ubwicanyi, buvuga ko ku wa 13/12/2017 saa mbiri za mu gitondo, mu gashyamba k'ahitwa i Nyamagana, mu Karere ka Ruhango, hasanzwe umurambo wa MUTATSIMPUNDU Thacienne wari warabyaranye umwana na NDAYIZEYE William ubwo yamukoreraga akazi k'ubucuruzi, uyu murambo ukaba wari umanitse mu giti uhambirije ikiziriko cy`ibara ry`umweru, hafi y`aho umurambo wari umanitse hari udukingirizo tubiri dupfunduye, ikindi cyagaragaye kuri nyakwigendera n'uko yari yasambanyijwe kuko mu gitsina cye hasanzwemo amasohoro; ku ikubitiro haketswe ko nyakwigendera yishwe na NDAYIZEYE William kuko akimara ku mutera inda yahise amwirukana ku kazi ngo bitamuteza ikibazo mu rugo, ndetse atangira gukurikiranwa. Mu bimenyetso byagezweho mu rwego rw'iperereza, harimo kuba amasohoro yasanzwe mu gitsina cya nyakwigendera yarapimwe, maze ibipimo bikagaragaza ko ari aya NDAYIZEYE William.

[2] NDAYIZEYE William yaburanye ahakana icyaha akavuga ko kuba barasanze amasohoro ye mu gitsina cya nyakwigendera ari nta gitangaje kirimo kuko ngo yari umugore we, kandi ko hari hashize iminsi itatu babonanye, ko rero akwiye kugirwa umwere kuko nta cyaha yakoze.

[3] Mu rubanza n° RP 00065/2018/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 12/07/2018, rushingiye kuri raporo y'umuhanga iri muri dosiye igaragaza ko amasohoro yasanzwe mu gitsina cya nyakwigendera ari aya NDAYIZEYE William, rushingiye kandi ku buhamya butandukanye nk'uko buri muri dosiye, rwasanze NDAYIZEYE William ahamwa n'icyaha akurikiranyweho, rumuhanisha igifungo cya burundu.

[4] NDAYIZEYE William yajuririye Urukiko Rukuru Urugereko rwa Nyanza, anenga kuba yaragaragaje ko ntaho ahurira n`urupfu rwa MUTATSIMPUNDU Thacienne kuko nyuma yo guhura aje kumwaka igikoma cy`umwana uyu yahise ataha, ariko Urukiko rwaciye urubanza ku rwego rwa mbere ntirubihe agaciro. Anenga kandi kuba Urukiko rwarahaye agaciro ubuhamya bwa HABAGUSENGA Ephron, MARIRO Thomas na MUTATSIMPUNDU Esperance kandi yari yarugaragarije ko batavugisha ukuri.

[5] Mu rubanza nº RPA 00514/2018/HC/NYZ rwaciwe n'Urukiko Rukuru Urugereko rwa Nyanza ku wa 16/05/2019, Urukiko rwasanze ubujurire bwa NDAYIZEYE William nta nsingiro bufite, kuko atashoboye kuvuguruza ibimenyetso byashingiweho ku rwego rubanza, ruhamishaho imikirize y'urubanza rwajuririwe.

[6] NDAYIZEYE William yajuririye na none Urukiko rw'Ubujurire, avuga ko yemera icyaha, asaba kugabanyirizwa igihano hashingiye kuri uko kwemera, asobanura ko icyatumye yica MUTATSIMPUNDU Thacienne ari uko yamize amasohoro ye, bituma amara imyaka 2 atabasha gukorana imibonano mpuzabitsina n'umugore we w'isezerano, ko yagiye kwivuza ku mupfumu witwa NYAGAHIGI Jean Bosco uyu amubwira ko adashobora gukira mu gihe MUTATSIMPUNDU Thacienne akiriho, maze bapanga gahunda yo kumwica, ko yahamagaye nyakwigendera nk'uko yari asanzwe abigenza, abasanga mu gashyamba kugira ngo bamuvure, amusambanya uwo mupfumu abareba, ariko atazi ko narangiza kumusambanya bamwica, ko amaze kumusambanya bamunigishije intoki baramwica, barangije, bamanika umurambo we ku giti bakoresheje ikiziriko cyari cyazanwe n'uwo mupfumu, bagamije kuyobya uburari kugira ngo uzawubona wese azagire ngo yiyahuye.

[7] Me NDAYISABYE Alex umwunganira, avuga ko NDAYIZEYE William yemera icyaha mu buryo budashidikanywaho ndetse akagisabira imbabazi, ku buryo yakuyeho urujijo ku birebana n'urupfu rwa MUTATSIMPUNDU Thacienne, ko kandi asanzwe yitwara neza kuko n'abantu bose bamutangaho urugero bakanamugisha inama, ko rero ashingiye kuri izo mpamvu nyoroshyacyaha akwiye kugabnyiurizwa igihano agahanishwa igifungo cy'imyaka 10.

[8] Uhagarariye Ubushinjacyaha avuga ko NDAYIZEYE William adakwiye kugabanyirizwa igihano kubera impamvu zikurikira: kuba atemeye icyaha mu buryo bwuzuye, kuko avuga ko ibyamubayeho byamugwiririye, nyamara yari yarabiteguye anabishyira mu bikorwa; kuba atarakuyeho icyo yise urujijo kuko nta gishya yazanye mu bujurire bwa kabiri, kubera ko n'ubundi yemeye icyaha yahamijwe hashingiwe ku bimenyetso biri muri dosiye atigeze avuguruza; kuba ataremeye icyaha mbere yo gukurikiranwa, cyangwa igihe yaburanaga mu Rukiko Rwisumbuye no mu Rukiko Rukuru no kuba icyaha yakoze yaragikoranye ubugome bw'indengakamere, aho yabanje gusambanya MUTATSIMPUNDU Thacienne bakoranaga ndetse banabyaranye umwana, umurambo we akawuhambira ku giti akigendera.

[9] Urubanza rwaburanishirijwe mu ruhame ku wa 13/01/2022, NDAYIZEYE William yunganiwe na Me NDAYISABYE Alex, naho Ubushinjacyaha buhagarariwe na UWANZIGA Lydia Umushinjacyaha ku rwego rw'Igihugu, iburanisha rirangiye bamenyeshwa ko isomwa ryarwo rizaba ku wa 28/01/2022, akaba ari wo munsi rusomwe.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba NDAYIZEYE William yagabanyirizwa igihano kubera ko yemera icyaha akagisabira imbabazi

[10] NDAYIZEYE William n'umwunganizi we bavuga ko Urukiko rukwiye kumugabanyiriza igihano kubera ko yemera icyaha akagisabira imbabazi. Asobanura ko MUTATSIMPUNDU Thacienne yamize amasohoro ye bituma amara imyaka 2 yose atabasha gukorana imibonano mpuzabitsina n'umugore we w'isezerano, ko yagiye kwivuza ku mupfumu witwa NYAGAHIGI Jean Bosco amubwira ko adashobora gukira mu gihe MUTATSIMPUNDU Thacienne akiriho, maze bapanga gahunda yo kumwica, ko yahamagaye nyakwigendera, abasanga mu gashyamba kugira ngo bamuvure, amusambanya uwo mupfumu abareba, ariko MUTATSIMPUNDU Thacienne atazi ko narangiza kumusambanya bamwica, ko amaze kumusambanya bamunigishije intoki baramwica, barangije bamanika umurambo we ku giti bakoresheje ikiziriko bari bafite bagamije kuyobya uburari kugira ngo uzawubona wese azagire ngo yiyahuye yimanitse.

[11] Bavuga kandi ko kuba NDAYIZEYE William yemera icyaha mu buryo budashidikanywaho ndetse akagisabira imbabazi, ku buryo yakuyeho urujijo ku birebana n'urupfu rwa MUTATSIMPUNDU Thacienne, no kuba asanzwe yitwara neza kuko n'abantu bose bamutangaho urugero bakanamugisha inama, ko ibyo bikwiye kumubera impamvu nyoroshyacyaha, akaba akwiye kugabanyirizwa igihano agahanishwa igifungo cy'imyaka 10, nk'uko uwo murongo wemejwe mu rubanza RPAA 0058/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/05/2018, haburana Ubushinjacyaha na NSABIMANA Anastase.

[12] Uhagarariye Ubushinjacyaha avuga ko NDAYIZEYE William atagabanyirizwa igihano kubera ko atemeye icyaha mu buryo bwuzuye kubera ko yavuze ko ibyamubayeho byamugwiririye kandi yari yarabiteguye anabishyira mu bikorwa by'agashinyaguro, no kuba atakuyeho icyo yise urujijo kuko nta gishya yazanye mu bujurire bwa kabiri, kubera ko n'ubundi yemeye icyaha yahamijwe n'Inkiko zitandukanye hashingiwe ku bimenyetso biri muri dosiye atigeze avuguruza birimo ubuhamya bwatanzwe n'abatangabuhamya bamushinja, ko kuba yaremeye ko yasambanyije MUTATSIMPUNDU Thacienne nk'uko byemejwe n'abahanga mu manza zabanje, ibyo bifatwa nko gushimangira ibyo bimenyetso bitewe n'uko yasanze ntaho yabicikira..

[13] Avuga kandi ko NDAYIZEYE William atagabanyirizwa igihano kubera ko atemeye icyaha mbere yo gukurikiranwa, cyangwa igihe yaburanaga mu Rukiko Rwisumbuye rwa Muhanga, no mu Rukiko Rukuru, Urugereko rwa Nyanza, nk'uko biteganywa n'ingingo ya 77 y'Itegeko - Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, kandi yari azi neza ko yakoze icyaha, ko ahubwo acyemereye bwa mbere mu Rukiko rw'Ubujurire ku bw'amaburakindi kugira ngo agabanyirizwe ibihano gusa kuko abona ko inzira zose z'ubujurire zigiye kurangira kandi nta kindi kimenyetso afite ashingiraho.

[14] Avuga na none ko NDAYIZEYE William atagabanyirizwa igihano kubera ubugome bw'indengakamere yakoranye icyaha kuko yahamagaye MUTATSIMPUNDU Thacienne bakoranaga bakanabyarana umwana, ndetse bakanasambana, yamugeraho akamwica yabanje kumusambanya, yarangiza, agahambira umurambo we ku giti, akawusigaho, akigendera.

UKO URUKIKO RUBIBONA

[15] Ku birebana n'ubujurire, ingingo ya 183, igika cya mbere, uduce twa 5° na 6° y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko *ujurira agomba kugaragaza urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa, akanatanga ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko, bivuze ko iyo uwajuriye atagaragaje inenge ziri mu rubanza rwajuririwe, nta n'icyo urukiko rwajuririwe rwakosora, ko ahubwo hakwiye kugumaho imikirize y'urubanza rwajuririwe.*

[16] Ku bijyanye n'igabanyagihano NDAYIZEYE William asaba kubera ko yemeye icyaha akanagisabira imbabazi, ingingo ya 77, uduce twa 1° na 3°, y'Itegeko - Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, iteganya ko "*Umucamanza ashobora kugabanya ibihano nk'iyo: ushinjwa, mbere yo gukurikiranwa, yemeye icyaha akagisabira imbabazi uwo yakoreye icyaha n'umuryango nyarwanda mu buryo budashidikanywa, akanacyicuza (...), n'iyo "mu ntangiriro z'iburanisha ku rwego rwa mbere, ushinjwa yireze akemera icyaha mu buryo budashidikanywa*.

[17] Ingingo ya 71 y'Itegeko – Ngenga rimaze kuvugwa haruguru, iteganya ko "*Umucamanza atanga igihano akurikije uko uhanwa yakoze icyaha, ashingiye ku mpamvu zabimuteye, uko uwakoze icyaha yari asanzwe yitwara, uburyo icyaha cyakozwemo n'imibereho ye bwite".*

[18] Inyandiko ziri muri dosiye y'urubanza zigaragaza ko kuva mu nzego z'iperereza, NDAYIZEYE William atigeze yemera icyaha cy'ubwicanyi, kandi ko Inkiko zombi zabanje zitamugabanyirije igihano kubera ko yaburanye ahakana icyaha, ahubwo zamuhamije icyo cyaha zinamuhanisha igifungo cya burundu hashingiwe ku bimenyetso biri muri dosiye birimo ubuhamya bwatanzwe na HABAGUSENGA Ephron na MUTATSIMPUNDU Espérance bugaragaza ko NDAYIZEYE William yagize uruhare mu kwica MUTATSIMPUNDU Thacienne kuko bemeje ko biyumviye NDAYIZEYE William n'umupfumu witwa NYAGAHIGI Jean Bosco baganira ko kuba MUTATSIMPUNDU Thacienne yaramize amasohoro ya NDAYIZEYE William, uyu azakira ari uko bamwishe, kandi ko HABAGUSENGA Ephron yemeje ko ikiziriko bakoresheje mu kumanika umurambo wa nyakwigendera mu giti, gisa neza n'icyo yari yabonye mu ikoti rya NYAGAHIGI Jean Bosco, no kuba umurambo wa nyakwigendera

MUTATSIMPUNDU Thacienne warasanzwemo amasohoro yapimwa n'abahanga bakemeza ko ari aya NDAYIZEYE William.

[19] Urukiko rusanga NDAYIZEYE William atagabanyirizwa igihano kubera ko atemeye icyaha mu buryo budashidikanywa mbere yo gukurikiranwa, cyangwa mu ntangiriro z'iburanisha ku rwego rwa mbere nk'uko biteganywa n'ingingo ya 77 y'Itegeko - Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru.

[20] Urukiko rusanga kandi, kuba NDAYIZEYE William yarageze kuri uru rwego rw'ubujurire bwa kabiri akavuga ko noneho yahisemo kwemera icyaha cy'ubwicanyi no kugisabira imbabazi kugira ngo agabanyirizwe ibihano, uko kwemera icyaha kutafatwa nk'impamvu y'ubujurire kuko ntacyo mu by'ukuri anenga imikirize y'urubanza rwajuririwe muri uru Rukiko nk'uko biteganywa n'ingingo ya 183 y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, rwamuhamije icyaha cy'ubwicanyi hashingiwe ku bimenyetso byavuzwe haruguru.

[21] Urukiko rusanga na none, n'ubwo NDAYIZEYE William avuga ko yemera icyaha aregwa, umucamanza adategetswe kugabanya igihano byanze bikunze ku wemeye icyaha, mu gihe asanga icyaha cyarakoranwe ubugome bukabije nk'uko NDAYIZEYE William yagikoze ubwo yicaga MUTATSIMPUNDU Thacienne amaze kumusambanya, yarangiza, akamanika umurambo we ku giti akawusiga mu gashyamba nk'uko bigaragazwa n'amafoto y'umurambo wa nyakwigendera ari muri dosiye, aho washoboraga kuribwa n'imbwa, agamije gusibanganya ibimenyetso nk'uko abyivugira, bivuze rero ko NDAYIZEYE William atagabanyirizwa igihano harebwe uburyo icyaha cyakoranwe ubugome bukabije.

[22] Uyu murongo ni nawo wafashwe n'Urukiko rw'Ikirenga mu rubanza n° RPA 0047/11/CS, Ubushinjacyaha bwaburanye na NSHUTIRAKIZA Narcisse rwaciwe ku wa 27/03/2015, aho uregwa yaburanye yemera icyaha, akanagisabira imbabazi, ariko urwo Rukiko rukanga kumugabanyiriza igihano, bivuze rero ko uru Rukiko rutashingira ku mirongo yatanzwe mu manza z'icyitegererezo (jurisprudence) zatanzwe n'uregwa mu gihe rusanga yarakoranye icyaha ubugome bukabije nk'uko byasobanuwe haruguru, bityo ubujurire bwa NDAYIZEYE William nta shingiro bufite.

III. CYEMEZO CY'URUKIKO

[23] Rwemeje ko ubujurire bwa NDAYIZEYE William nta shingiro bufite.

[24] Ruvuze ko imikirize y'urubanza nº RPA 00514/2018/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 16/05/2019, idahindutse.

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