UBUSHINJACYAHA v. NYIRAMUGISHA

[Rwanda URUKIKO RUKURU – RPAA 0059/14/HC/RSZ (Bakuzakundi, P.J.) 29 Nzeli 2014]

Amategeko Mpanabyaha – Ubwinjiracyaha mu kwihekura – Ubwinjiracyaha buharanirwa n'ubwo icyari cyagenderewe kitashoboye kugerwaho bitewe n'impamvu nyir'ugukora icyaha atashoboye kumenya – Ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye bufatwa kimwe nk'icyaha cy'ubugome cyangwa icyaha gikomeye ubwacyo – Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana, ingingo za 28na 29.

Amategeko y'imiburanishirize y'imanza nshinjabyaha – Ihuzwa ry'ibihano bitanzwe n'Urukiko rumwe ku cyaha kimwe – Mu gihe hadasobanuwe umwihariko mu ikorwa ry'icyaha kiburanishwa kandi hakaba haraciwe imanza ku byaha bisa nacyo, ibihano bigomba gusa.

Amategeko Mpanabyaha – Impamvu nyoroshyacyaha – Iyo icyaha cyakozwe nta ngaruka zikomeye cyateje bituma igihano kigabanuka – Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana, ingingo ya 77, 4.

Incamake y'ikibazo: Uregwa yabyaye umwana w'umuhungu, maze nyuma y'icyumweru kimwe gusa amubyaye amujyana mu bigori byari hafi y'ikiraro cya Rubyiro amushyira mu mwobo arenzaho ibuye yisubirira mu rugo. Uwari wamuteye inda ubwo yari avuye i Bugande gupagasa yagiye kumureba ngo amwereke

umwana yabyaye undi amuhisha ko yamutaye, ahubwo amwereka uwo yatiye ariko nawe ahita atahura ko uregwa amubeshya uwo mwana amwereka atari uwe yitabaza inzego z'ubuyobozi ngo zimubaze aho yashyize uwo mwana.

Uregwa yarezwe mu Rukiko Rwisumbuye rwa Rusizi, ku cyaha cyo guta umwana, maze ruhindura inyito y'icyaha rwemeza ko ibikorwa uregwa yakoze bigize icyaha cy'ubwinjiracyaha mu cyaha cyo kwihekura, aho kuba icyaha cyo guta umwana yaregwaga n'Ubushinjacyaha, rumuhanisha igihano cyo gufungwa imyaka makumyabiri naho amagarama y'urubanza ahererezwa ku isanduku ya Leta. Uregwayajuririye Urukiko Rukuru Urugereko rwa Rusizi, avuga ko inyito y'icyaha yahamijwe n'Urukiko Rwisumbuye atariyo, ko icyaha yakoze ari icyo guta umwana ariko atagambiriye ko apfa ahubwo agamije kugira ngo abantu bamutoragure bamujyane mu kigo kirera impfubyi.

Mu gihe cy'iburanisha ry'urubanza mu Rukiko Rukuru, uregwa yahinduye impamvu y'ubujurire yari ikubiye mu myanzuro ye, avuga ko yajurijwe no gukomeza gusaba imbabazi kugira ngo Urukiko Rukuru rumugabanyirize igihano kinini yahawe n'Urukiko rwaciye urubanza ku rwego rwa mbere, kubirebana n'impamvu zashingirwaho agabanyirizwa igihano, uregwa akavuga ko usibye impamvu nyoroshyacyaha zasobanuwe n'Urukiko ku rwego rwa mbere, hanitabwa cyane cyane kukuba yarasize abana bato mu rugo batagira kirera ubu akaba atazi aho baherereye, byashoboka agafungurwa akabasanga.Kuri iki kibazo, Ubushinjacyaha bwo buvuga ko bubona ubujurire bw' uregwa nta shingiro bufite kuko ibyo kugabanyirizwa igihano asaba mu Rukiko Rukuru yabihawe n'Urukiko Rwisumbuye rwa Rusizi rwaciye urubanza ku rwego rwa mbere, rwamugabanyirije igihano ku buryo buhagije ugereranyije

n’ubugome bukabije bwakoranywe iki cyaha, ubwo yacukuraga umwobo agashyiramo umwana akarenzaho ibuye.

Incamake y’icyemezo: 1. N’ubwo impamvu uregwa yishingikiriza ku rwego rw’ubujurire avuga ko zoroshya ububi bw’icyaha yakoze ari izashingiweho n’Urukiko Rwisumbuye rwa Rusizi rumugabanyiriza igihano yagombaga guhabwa rukagena ikindi gikwiye nyuma yo kwemeza ko rubona ibyo yishingikiriza asaba kugabanyirizwa igihano koko ari impamvu nyoroshyacyaha, Urukiko Rukuru rurasanga mu itangwa ry’igihano muri uru rubanza hataritawe ku ihuzwa ry’ibihano bisanzwe bitangwa n’Urukiko Rwisumbuye rwa Rusizi ku cyaha kimwe, kandi ntirwanagaragaza mu isobanurampamvu z’urubanza rwaciwe niba hari umwihariko uru rubanza rufite watuma uwakoze icyaha ahabwa igihano gihanitse ugereranyije n’igihano cyahawe abo bakoze icyaha kimwe kandi mu buryo bumwe,bo bahanishijwe gufungwa imyaka icumi.

2. Kuba icyaha uregwa yakoze nta ngaruka zikomeye cyateje kuko umwana uvugwa mu rubanza yatabawe atarapfa akitabwaho agakira, bituma agomba kugabanyirizwa igihano yahawe mu rubanza rujuririrwa.

Ubujurire nta shingiro bufite.
Urubanza rwajuririwe ihindutse gusa ku birebana n’igihano.
Uregwa ahanishijwe igihano cy’igifungo cy’imyaka 10.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana, ingingo za 28, 29, 76, 77, 78 na 143.
Itegeko n°13/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabya, ingingo ya 191.
Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Imanza zifashishijwe:
Ubushinjacyaha v. Mukaniyonsenga, RP 0024/14/TGI/RSZ, rwaciwe n'Urukiko Rwisumbuye rwa Rusizi kuwa 28/03/2014.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 03/06/2013 Nyiramugisha Joséphine yabyaye umwana w'umuhungu, maze nyuma y'icyumweru kimwe gusa amubyaye amujyana mu bigori byari hafi y'ikiraro cya Rubyiro amutamo yisubirira mu rugo.

[2] Uwitwa Ndungutse Davide wari wateye Nyiramugisha Joséphine inda akubutse mu rugendo yari yagiyemo i Bugande gupagasa yagiye kureba Nyiramugisha Joséphine kugira ngo amwereke umwana yabyaye undi amuhisha ko yamutaye, ahubwo amwereka uwo yatiye ariko Ndungutse Davide ahita atahura ko Nyiramugisha Joséphine amubeshya uwo mwana amwereka atari uwe yitabaza inzego z'ubuyobozi ngo zibaze Nyiramugisha Joséphine aho yashyize uwo mwana.

[3] Ubugenzacyaha bwabitangijeho iperereza ry'ibanze rirangiye dosiye buyishyikiriza Ubushinjacyaha bukomeza iperereza, risozwa ubushinjacyaha bufashe umwanzuro wo kurega mu Rukiko Nyiramugisha Joséphine icyaha cyo guta umwana.

[4] Mu rubanza RP 0030/14/TGI/RSZ rwaciwe kuwa 23/04/2014, Urukiko Rwisumbuye rwa Rusizi rwahinduye inyito y'icyaha rwemeza ko ibikorwa Nyiramugisha Joséphine yakoze bigize icyaha cy'ubwinjiracyaha mu cyaha cyo kwihekura, aho kuba icyaha cyo guta umwana yaregwaga n'Ubushinjacyaha. Urukiko rwahanishije Nyiramugisha Joséphine igihano cyo gufungwa imyaka makumyabiri, amagarama y'urubanza aherezwa ku isanduku ya Leta. Nyiramugisha Joséphine ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru Urugereko rwa Rusizi, maze ikirego cye cyandikwa mu gitabo cy'ibirego kuri RPA 0059/14/HC/RSZ.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Mu miburanishirize y'uru rubanza hagaragayemo ikibazo kimwe kigomba gusuzumwa n'urukiko rukagifataho umwanzuro, aricyo cyo kumenya niba kuburana yemera icyaha agasaba imbabazi byamubera impamvu nyoroshyacyaha zashingirwaho n'Urukiko rwajuririwe akagabanyirizwa igihano yagenewe n'Urukiko rwaciye urubanza ku rwego rwa mbere.

[5] Mu myanzuro yashyikirije Urukiko Rukuru atanga ikirego cy'ubujurire, Nyiramugisha Joséphine avugamo ko

inyito y'icyaha yahamijwe n'Urukiko Rwisumbuye atariyo, ko icyaha yakoze ari icyo guta umwana ariko atagambiriye ko apfa ahubwo agamije kugira ngo abantu bamutoragure bamujyane mu kigo kirera impfubyi, ibi akaba yarabikoze kubera ko uwo mwana yavutse umugabo we yaramutaye mu nzu y'inkodeshanyo yabanagamo n'abana babiri barya aruko abaciriye inshuro, abona rero nta bushobozi afite bwo kubona icyo atungisha uwo mwana wundi uvutse.

[6] Nyiramugisha Joséphine asobanura kandi mu mwanzuro we wanditse ko muri uko gufata ibintu uko bitari hashingirwa gusa ku mvugo z'umugabo watoraguye uwo mwana, Ubugenzacyaha, Ubushinjacyaha ndetse n'Urukiko ntawigeze akora iperereza ngo harebwe aho yari yasize umwana agamije ko atoragurwa akajyanwa mu kigo kirera impfubyi, ko bitari gushoboka ko umwana w'uruhinja atabwa mu mwobo nk'uko bivugwa n'uwamutoraguye, ngo nyuma bamusange ari muzima mu gihe cyose yari ahamaze.

[7] Mu gihe cy'iburanisha ry'urubanza mu Rukiko Rukuru, Nyiramugisha Joséphine yahinduye impamvu y'ubujurire yari yanditse, avuga ko yajurijwe no gukomeza gusaba imbabazi kugira ngo Urukiko Rukuru rumugabanyirize igihano kinini yahawe n'Urukiko rwaciye urubanza ku rwego rwa mbere, kubirebana n'impamvu zashingirwaho agabanyirizwa igihano, uregwa akavuga ko usibye impamvu nyoroshyacyaha zasobanuwe n'Urukiko ku rwego rwa mbere, hanitabwa cyane cyane kukuba yarasize abana bato mu rugo batagira kirera ubu akaba atazi aho baherereye, byashoboka agafungurwa akabasanga.

[8] Kuri iki kibazo, Ubushinjacyaha bwo buvuga ko bubona ubujurire bwa Nyiramugisha Joséphine nta shingiro bufite kuko

ibyo kugabanyirizwa igihano asaba mu Rukiko Rukuru yabihawe n'Urukiko Rwisumbuye rwa Rusizi rwaciye urubanza ku rwego rwa mbere, rwamugabanyirije igihano ku buryo buhagije ugereranyije n'ubugome bukabije bwakoranwe iki cyaha, Nyiramugisha Joséphine acukura umwobo agashyiramo umwana akarenzaho ibuye.

[9] Ubwo yabazwaga mu Bugenzacyaha ku itariki ya 11/01/2014, Nyiramugisha Joséphine yasobanuye ko asiga uwo mwana wari umaze ibyumweru bibiri avutse mu bigori yari agamije kugira ngo hazagire umutoragura amwijyanire kuko we nta bushobozi yari afite bwo kumurera kandi uwari yamuteye inda yarigiriye ahantu atazi mu Bugande, ariko ko atigeze amushyira mu mwobo ngo agerekeho ibuye (côte ya 6), umugenzacyaha amubajije impamvu atashyize uwo mwana ahagaragara nko ku Murenge, kuri Police cyangwa mu bihaye Imana niba koko yari agamije kugira ngo hagire umwitwarira, Nyiramugisha Joséphine asubiza kuri côte ya 7 ko aho koko yibeshye.

[10] Mu ibazwa rye ryo kuwa 13/01/2014 mu Bugenzacyaha, kuri côte ya 8, Nyiramugisha Joséphine yemeye ko mu gihe yataga uwo mwana yasize amugeretseho ibuye, akaba ari nabyo yavugiye mu iburanisha ryo mu Rukiko Rwisumbuye nk'uko bigaragara ku rupapuro rwa 7 rw'inyandiko mvugo z'iburanisha ryo kuwa 13/03/2014, ariko Nyiramugisha Joséphine abajijwe icyo yari agamije agereka ibuye ku mwobo uvugwa ko ari uwo yari yashyizemo uwo mwana, araceceka.

[11] Ibi Nyiramugisha Joséphine yemereye mu Bugenzacyaha no mu Rukiko Rwisumbuye rwa Rusizi byemezwa kandi na Hategekimana Emmanuel uvuga kuri côte ya 14 ko yahuruye yumvise abantu bavuga ko babonye umwana

utabye ageze aho yari ari mu mwobo ugeretseho ibuye amukuramo kubera ko yari yanyagiwe amujyana kuri Centre de Santé Islamique nabo bahita bamwohereza mu bitaro bikuru i Mibirizi amaramo ibyumweru bibiri n'igice bamwongerera amaraso n'umwuka akaba no mu cyuma kimushyushya.

[12] Iyo harebwe ibibazo by'ubukene Nyiramugisha Joséphine avuga ko yari afite mu gihe yabyaraga uriya mwana, hakarebwa uburyo yahishe ko atwite ndetse yanabyara ntihagire ubimenya nk'uko abyisobanurira mu mvugo ze zo mu Bugenzacyaha, hakarebwa kandi uburyo we ubwe atashatse umugiraneza yasobanurira ikibazo cy'ubukene afite ngo amusabe ko yamwihera uwo mwana akamumurerera ahubwo akamushyira mu mwobo uri ahiherereye mu bigori akagerekaho ibuye akigendera ntanagaruke kuri uwo munsi kureba ko hari uwahamuvanye mu rwego rwo kwirinda ko yaharara akicwa n'imbeho cyangwa akaribwa n'ibisimba, ndetse harebwe n'uburyo aho Ndungutse David (côte ya 10-14) (wemera ko ari we wamuteye inda) aviriye mu ruzinduko yari yaragiyemo i Bugande akamenya ko Nyiramugisha Joséphine yabyaye yamubajije aho umwana we ari undi akamuhisha ukuri ahubwo akajya gutira umwana akamuheka mu rwego rwo kujijisha kugeza ubwo uwatiwe umwana amuvuyemo akamwaka umwana we Ndungutse David bikamutera urujijo bigatuma ajya kurega Nyiramugisha Joséphine ku Murenge ikibazo cyo kwihekura kikabona kujya ahagaragara; ikomatanwa n'isesengurwa ry'ibi byose bituma Urukiko Rukuru rwemeranya n'Urukiko rwaciye urubanza ku rwego rwa mbere rwasobanuye mu buryo bwumvikana muri nimero ya 8 iri ku rupapuro rwa 2 rw'urubanza RP 0030/14/ TGI/RSZ, ko akora ibi, Nyiramugisha Joséphine yari agamije kwihekura ariko

ntiyagera kuri uwo mugambi we ku mpamvu atazi zitamuturutseho.

[13] Ingingo ya 28 y'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana igateganya ko ubwinjiracyaha buhanirwa n'ubwo icyari cyagenderewe kitashoboye kugerwaho bitewe n'impamvu nyir'ugukora icyaha atashoboye kumenya. Igika cya mbere cy'ingingo ya 29 y'iryo Tegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 cyo giteganya ko ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye bufatwa kimwe nk'icyaha cy'ubugome cyangwa icyaha gikomeye ubwacyo, igika cya kabiri cy'iyi ngingo cyo kikavuga ko icyakora, mu kugena ibihano kubyerekeranye n'ubwinjiracyaha, umucamanza ashobora kugabanya ibihano bitewe n'uburyo ubwinjiracyaha bwakozwe; hashingiwe rero kubiteganywa n'izi ngingo zimaze kuvugwa, Urukiko Rukuru rukabona ibikorwa Nyiramugisha Joséphine yakoze bihanishwa ingingo ya 143 y'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana, isobanura kokwihekura ari ubwicanyi bukorewe umwana wabyaye cyangwa uwo ubereye umubyeyi mu buryo bwemewe n'amategeko, bigahanishwa igifungo cya burundu.

[14] Nk'impamvu y'ubujurire, Nyiramugisha Joséphine asaba ko yagabanyirizwa igihano yahawe n'Urukiko rwaciye urubanza ku rwego rwa mbere, nyamara nk'uko bigaragara muri nimero ya 9 n'iya 10 ziri ku rupapuro rwa 3 rw'urubanza RP 0030/14/TGI/RSZ, hasobanuwe neza uburyo Nyiramugisha Joséphine yagombaga guhabwa igihano cyo gufungwa burundu ku cyaha yahamijwe hashingiwe ku bimenyetso bishinja icyaha birimo no kuba we ubwe yemera ibyo aregwa, ariko ko kubera

impamvu nyoroshyacyaha zemejwe n'Urukiko rushingiye ku ngingo ya 76 n'iya 77 z'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana (kuba ari ubwa mbere Nyiramugisha Joséphine akoze icyaha gihanwa n'amategeko no kuba yemera icyaha akanagisabira imbabazi), icyo gihano yagombaga guhanishwa kigabanyijwe kigashyirwa ku myaka makumyabiri (20 ans) y'igifungo hashingiwe ku biteganywa mu gace ka mbere k'ingingo ya 78 y'Itegeko Ngenga nº 01/2012/OL ryavuzwe, iyi ngingo ikaba iteganya ko mu gihe Urukiko rwemeje ko hari impamvu nyoroshyacyaha, "igihano cyo gufungwa burundu cyangwa y'umwihariko gisimbuzwa igihano cy'igifungo kitari munsi y'imyaka icumi (10 ans".

[15] N'ubwo ariko impamvu Nyiramugisha Joséphine yishingikiriza ku rwego rw'ubujurire avuga ko zoroshya ububi bw'icyaha yakoze ari izashingiweho n'Urukiko Rwisumbuye rwa Rusizi rumugabanyiriza igihano yagombaga guhabwa rukagena ikindi gikwiye nyuma yo kwemeza ko rubona ibyo yishingikiriza asaba kugabanyirizwa igihano koko ari impamvu nyoroshyacyaha, Urukiko Rukuru rubona mu itangwa ry'igihano muri uru rubanza hataritawe ku ihuzwa ry'ibihano bisanzwe bitangwa n'Urukiko Rwisumbuye rwa Rusizi ku cyaha kimwe (harmonisation des peines prononcées au sein d'une même juridiction sur une même infraction) kandi ntirwanagaragaza mu isobanurampamvu z'urubanza rwaciwe niba hari umwihariko uru rubanza rufite watuma uwakoze icyaha ahabwa igihano gihanitse ugereranyije n'igihano cyahawe abo bakoze icyaha kimwe kandi mu buryo bumwe[1]bo bahanishijwe gufungwa imyaka icumi.

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[1]Mu rubanza RP 0024/14/TGI/RSZ rwaciwe n`Urukiko Rwisumbuye rwa Rusizi kuwa 28/03/2014, Mukaniyonsenga Frolence wakoze icyaha kimwe

[16] Hagendewe ku bimaze gusobanurwa, ndetse no kukuba icyaha Nyiramugisha Joséphine yakoze nta ngaruka zikomeye cyateje (agace ka kane k'ingingo ya 77 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana) kuko umwana uvugwa mu rubanza yatabawe atarapfa akitabwaho agakira, Urukiko Rukuru rusanga Nyiramugisha Joséphine agomba kugabanyirizwa igihano yahawe mu rubanza RP0030/14/TGI/RSZ rujuririrwa. Nyiramugisha Joséphine agomba kandi gusonerwa gutanga amagarama y'urubanza kuko afunzwe, hagendewe ku biteganywa mu gika cya kabiri cy'ingingo ya 191 y'Itegeko n°30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

III. ICYEMEZO CY'URUKIKO

[17] Rwemeye kwakira ikirego cy'ubujurire cya Nyiramugisha Joséphine kuko cyatanzwe mu gihe no mu buryo buteganywa n'amategeko.

[18] Rwemeje kandi rutegetse ko imikirize y'urubanza RP 0030/14/TGI/RSZ rwaciwe n'Urukiko Rwisumbuye rwa Rusizi ku itariki ya 23/04/2014 ihindutse kubijyanye n'igihano cyatanzwe, Nyiramugisha Joséphine akaba ahanishijwe igifungo cy'imyaka icumi (10 d'emprisonnement ferme).

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n'icyo Nyiramugisha Joséphine yahamijwe, muri urwo rubanza hakemezwa ko hari impamvu nyoroshyacyaha zimwe n'izemejwe mu rubanza rwa Nyiramugisha Joséphine, kandi hakanashingirwa ku ngingo n'amategeko amwe mu igenwa ry'ibihano, yahawe igihano cyo gufungwa imyaka icumi nyamara Nyiramugisha Joséphine we ahabwa igihano cyo gufungwa imyaka makumyabiri.

[19] Rutegetse ko Nyiramugisha Joséphine asonewe gutanga amafaranga y’amagarama y’urubanza kuko afunzwe, aya mafaranga akaba ahererejwe ku isanduku ya Leta.