

## HABIMANA v. REKAYABO

[Rwanda URUKIKO RUKURU – RCA 0197/12/HC/KIG (Hitimana, P.J.) 23 Gicurasi 2014]

*Amategeko agenga umuryango – Ikirego cy’umwana ushaka kugira se – Ikimenyetso – Agaciro k’ikizamini cya ADN – Ibyemejwe n’ikizamini cya ADN ku byerekeye kumenya niba umwana n’ukekwaho kuba se bifatwaho ukuri, kuko gisohoka kigaragaza ko nta sano bafitanye cyangwa ko bafitanye isano iri hejuru ya 99 %.*

**Incamake y’ikibazo:** Rekayabo na Habimana bakiri abasore barakundanye nyuma yaho Rekayabo abyara umwana witwa Niyigena Mugisha, ibyo biza gutuma atanga ikirego mu Rukiko rw’Ibanze rwa Nyamirambo asaba ko Urukiko kwemeza ko Habimana ari we se w’uwo mwana, maze rwemeza ko umwana ari uwe rushingiye ku nyandiko yagiye yiyandikira amwemera.

Habimana ntiyishimiye imikirize y’urubanza arujuririra mu Rukiko Rwisumbuye avuga ko n’ubwo yari aziranye na Rekayabo ariko umwana Niyigena Mugisha atari uwe ndetse ko n’izo nyandiko yanditse yazandikaga abitegetswe n’ubuyobozi, bityo agasaba ko hakoreshwa ikizamini cya ADN. Urukiko rwemeje ko uwo mwana ari uwe rutitaye ku kizami cya ADN yari yasabye gukoresha rugendeye ku bindi bimenyetso bigizwe n’inyandiko yagiye yandika cyangwa se anasinyaho yemera ko umwana ari uwe, imbere y’abayobozi n’abatwaga.

Habimana ntiyishimiye iyo mikirize ajurira mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rutagaragaje ko yasabye ikoreshwa rya ADN mu rubanza rumwemeza umwana mu gihe nyamara rwabifasheho icyemezo bikananirana kubera amananiza ya Rekayabo utarabonekaga ngo hafatwe ibizamini, nyuma rukaza gushingira ku bimenyetso byari bisanzwe byaratanze kandi atabyemera.

**Incamake y’icyemezo:** Ibyemejwe n’ikizamini cya ADN ku byerekeye kumenya niba umwana n’ukekwaho kuba se bifatwaho ukuri, kuko gisohoka kigaragaza ko nta kuntu uwo muntu yaba se w’umwana (cyemeza ko nta sano bafitanye) cyangwa kikemeza ko bafitanye isano iri hejuru ya 99 % kubw’ibyo rero kuba ikizamini kigaragaza ko Habimana adashobora kuba ariwe wabyaye Niyigena Mugisha bigomba gufatwaho ukuri.

**Ubujurire bufite ishingiro.**

**Amagarama y’urubanza aherereye ku regwa.**

**Amategeko yashingiweho:**

Itegeko-ngenga N° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n’ububasha by’inkiko, ingingo ya 106 (1°).

**Imanza zifashishijwe:**

Ubushinjacyaha v. Kambanda, RPAA 0054/09/CS, rwaciwe n’Urukiko rw’Ikirenga kuwa 30/06/2011.

**Urubanza**

**I. IMITERERE Y’URUBANZA**

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nyamirambo, aho Rekayabo Hashura yasabaga Urukiko kwemeza ko umwana witwa Niyigena Mugisha Ally yabyawe na Habimana Assumani. Urukiko rwemeje ko ari umwana we. Habimana Assumani ntiyishimiye iyo mikirize, ayijuririra mu Rukiko Rwisumbuye, avuga ko n'ubwo yari aziranye na Rekayabo Hashura, ko umwana Niyigena Mugisha Ally atari uwe, ahubwo akaba yarasabaga ko yakoresheye "test ADN".

[2] Urukiko Rwisumbuye rwashingiye ko hari inzandiko Habimana yagiye akora, ibyo avuga ko yazikoraga kubera abayobozi, Urukiko rwasanze uretse kubivuga gusa, nta kimenyetso agaragaza ko yashyizweho iterabwoba kugira ngo yemera ko umwana ari uwe. Rwashingiye kandi ku kuba Habimana yemera ko we na Rekayabo bakiri abasore bakundanye, nyuma Rekayabo aza kubyara umwana, Habimana akemera ko umwana ari uwe, ndetse akanamugenera ibimutunga, ibyo bikaba byarakorewe inyandiko we ubwe yagiye yiyandikira yemera umwana. Urukiko rwasanze ibyo bimenyetso bihura n'ibiteganywa n'ingingo ya 328 y'itegeko n° 42/1988 rishyiraho Interuro y'Ibanze n'igitabo cya mbere cy'Urwunge rw'Amategeko mbonezamubano, ivuga ko ikirego cy'umwana ushaka kugira se cyemerwa cyane cyane mu bihe byo ngingo ivuga, harimo iyo hari inyandiko cyangwa imvugo idashidikanywaho byemeza ko umugabo amwemera, no kuba umugabo yemeye gufata umwana neza, akamurera, akamugenera ibintu bya bwite nk'aho ari se. Urukiko rwakomeje rusobanura ko kuba ikizamini cya ADN ababuranyi batarashoboye kugikoresha nk'uko bari babisabye, Urukiko rwagendera ku bindi bimenyetso byemeza ko Habimana yemeraga uwo mwana, birimo nk'inyandiko yagiye yandika cyangwa se anasinyaho yemera ko umwana ari uwe, imbere y'abayobozi n'abaturage, urukiko rukaba rusanga ibyo bimenyetso bihagije mu kwemeza ko koko uwo mwana ari uwa Habimana. Kubera izo mpamvu, Urukiko rwemeje ko umwana ari uwa Habimana Assumani, rwemeza ko ntahindutse ku rubanza rwajuririwe.

[3] Habimana Assumani ntiyishimiye imikirize, ayijuririra muri uru Rukiko. Yasobanuye ko yajuririye Urukiko Rwisumbuye, asaba ko hakoresheye ikizamini cya ADN kubera ko n'ubwo yemeraga ko yakundanye na Rekayabo, nyuma y'uko yemeye umwana mu buyobozi bw'Ibanze akamugenera n'ibimutunga, nibwo Rekayabo yatangiye kugenda abwira inshuti za Habimana ko umwana atari uwe, ibyo bituma agira ugushidikanya. Avuga ko Urukiko Rwisumbuye rwabahaye Urupapuro rwo kujya kwipimisha, umunsi ugeze Rekayabo ntiyaboneka, Habimana amuhamagaye yanga kuza, ariko ngo ibyo byose Urukiko Rwisumbuye ntirwabigaragaje mu rubanza. Yasobanuye ko n'impapuro yanditse yemera umwana yasobanuye uburyo yazanditsemo, ko yemeraga ko umwana ashobora kuba ari uwe, ariko akavugaga ko umwana navuka hazakoresheye ikizamini cya ADN.

[4] Urukiko rwemeye kwakira ubujurire bwa kabiri bwa Habimana Assumani, kubera ko ingingo ya 106, 1° y'itegeko ngenga n° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ivuga ko urubanza rwaciye ku rwego rwa kabiri n'Urukiko Rwisumbuye rushobora kujuririrwa mu Rukiko Rukuru, iyo urwo rubanza rutagaragaza nabusa impamvu rushingiyeho. Impamvu Urukiko Rukuru rwafashe urubanza rwaciye n'Urukiko Rwisumbuye nk'urutaragaza nabusa impamvu rushingiyeho, ni uko Habimana Assumani yari yajuririye asaba ko hakoresheye ikizamini cya ADN, kandi Urukiko rwarabyemeye, kuko mu cyemezo cyarwo cyo ku wa 04/05/2012, rwafashe icyemezo ko hafatwa ibizamini bizifashishwa mu gupima ADN bya Habimana Assumani na Niyigena Mugisha Ally. Ibi bizamini ntibyakoreshejwe, kandi mu rubanza ntaho umucamanza agaragaza impamvu ibyo bizamini bitakoreshejwe, n'impamvu aretse ibijyanye n'ikizamini cya ADN ababuranyi bombi bemeraga ko aricyo cyabakiranura ku kumenya niba Habimana

ari se w'umwana koko, ahubwo rugahitamo kugendera ku bimenyetso byari bisanzwe muri dosiye.

[5] Urukiko Rukuru, rumaze kwakira ubujurire, rwategetse, mu cyemezo cyarwo cyo ku wa 19/05/2013, ko Habimana Assumani na Niyigena Mugisha Ally bafatwa amaraso, hagakorwa ibizamini bya ADN, kugira ngo bifashe Urukiko kumenya niba Niyigena Mugisha Ally yarabyawe na Habimana Assumani, nk'uko Rekayabo Hashura, nyina wa Niyigena Mugisha Ally, abyemeza.

[6] Ibizamini byarakoreshejwe, Umushinjacyaha Mukuru abyohereza Urukiko mu ibaruwa ye yo ku wa 23/10/2013, iburanishwa risubukurwa ku wa 29/04/2014.

[7] Igisuzumwa muri uru rubanza ni ukumenya niba hakurikijwe ibizamini bya ADN byakoreshejwe, hakwemezwa ko umwana Niyigena Mugisha Ally yabyawe na Habimana Assumani.

## II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

[8] Umuhanga Dr Christa Augustin, nyuma yo kurahira, asobanura uburyo yakoresheje apima ADN, agaragaza ko hari ibizamini 10 kuri 18 bigaragaza kutagira aho bihurira (there are inconsistencies with paternity in 10 out of 18 DNA – Short- Tandem – Repeat Systems). Bityo mu mwanzuro we avuga ko ibyo bisobanura ko Habimana Assumani adashobora kuba ariwe se w'umwana Ally Niyigena Mugisha (that means that Assumani Habimana does not have the paternally inherited allele of the child Ally Niyigena Mugisha in the 10 systems. Thus he cannot be the father of the child).

[9] Rekayabo Hashura avuga ko ibi bisubizo atabyemera, ko yifuza ko hakoreshwa ubundi buryo kuko we nyina w'umwana ariwe uzi neza ko Habimana Assumani ariwe se w'umwana.

[10] Urukiko rurasanga Habimana Assumani na Rekayabo Hashura bari bemeye mu Rukiko Rwisumbuye, ndetse no muri uru Rukiko, ko ikizamini cya ADN aricyo cyabakiranura. Urukiko rurasanga kandi uretse n'ibyo, ibyo uwakoze iki kizamini yemeje, bikwiye guhabwa agaciro kuko bihura n'iby'abandi bahanga bemeza. Basobanura ko iyo hari ibyo bareberaho bimwe babonye ku mwana, ntibabibone ku mugabo ukekwa kuba ariwe se, bifatwa nk'aho uwo mugabo adashobora kuba se w'umwana (In other words, the child has a paternal allele that is not found in the tested man. In such cases, the paternity index [PI] is 0.0, the combined paternity index [CPI] is 0.0 and the probability of paternity is 0.0%).<sup>1</sup>. No kuri Ally Niyigena Mugisha Habimana Assoumani ni uko umuhanga yabibonye, kuko yasanze ibyagaragaza ko Habimana ariwe wabyaye uyu mwana ari ntabyo (That means that Assouman Habimana does not have the paternally inherited allele of the Child Ally Niyigena Mugisha).

[11] Urukiko rurasanga ku gaciro ikizamini cya ADN gihabwa, Urukiko rw'Ikirenga narwo rwemeje ko ibyemejwe n'icyo kizamini ku byerekeye kumenya niba umwana n'ukekwaho kuba se gifatwaho ukuri, kuko gisohoka kigaragaza ko nta kuntu uwo muntu yaba se w'umwana (cyemeza ko nta sano bafitanye) cyangwa kikemeza ko bafitanye isano iri

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<sup>1</sup> Bikuwe ku rubuga <http://www.genetica.com/GeneticaWebV2.nsf/XReadingtheResults.xsp>, aho basobanura uko ibizamini bya AND bisomwa (Reading the DNA TEST results).

hejuru ya 99 % <sup>2</sup>. Kuba ikizamini kigaragaza ko Habimana Assoumani adashobora kuba ariwe wabyaye Ally Niyigenga Mugisha bigomba gufatwaho ukuri.

[12] Kubera impamvu zimaze gusobanurwa, Urukiko rurasanga ubujurire bwa Habimana Assoumani bufite ishingiro, umwana Ally Niyigenga Mugisha akaba atariwe wamubyaranye na Rekayabo Hashura.

### **III. ICYEMEZO CY'URUKIKO**

[13] Rwemeje ko ubujurire bwa Habimana Assoumani bufite ishingiro.

[14] Rwemeje ko ubujurire bwa Rekayabo Hashura nta shingiro bufite.

[15] Rwemeje ko imikirize y'urubanza RCA 0658/11/TGI/NYGE, rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 31/07/2012, ihindutse kuri byose.

[16] Rwemeje ko umwana Ally Niyigenga Mugisha atabyawe na Habimana Assoumani.

[17] Rutegetse Rekayabo Hashura gutanga amagarama y'uru rubanza, angana n'amafaranga 75.000, ahereye ku mafaranga yatanzeho ingwate y'amagarama.

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<sup>2</sup> Urubanza RPAA 0054/09/CS rw'Ubushinjacyaha na KAMBANDA Hussein, rwaciwe n'Urukiko rw'Ikirenga ku wa 30/06/2011 (Icyegeranyo cy'ibyemezo by'Inkiko, n° 11, p 14