# UBUSHINJACYAHA v. TUYISENGE

[Rwanda URUKIKO RUKURU - RPA 00319/2021/HC/MUS (Gatwaza, P.J.) 19 Ukwakira 2022]

*Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Ibimenyetso mu manza nshinjabyaha – Ibimenyetso bidashidikanywaho – Ushinjwa aba umwere iyo Ubushinjacyaha budashoboye kugaragaza ibimenyetso bidashidikanywaho bimushinja.*

*Amategeko agenga imanza z'inshinjabyaha – Ibimenyetso – Ubuhamya – Ubuhamya bwuzuye kandi budashidikanywa ho – Ubuhamya bwuzuye kandi budashidikanywaho ni ubutangiwe mu rukiko.*

**Incamake y'ikibazo:** Urubanza rwatangiriye murukiko rwisumbuye rwa Rubavu Tuyisenge Jean Pièrre akurikiranywe ho icyaha cyo gusambanya umwana w'umukobwa witwa Umuhoza Jeannette w'imyaka 17 y'amavuko; uregwa yaburanye ahakana icyaha akurikiranyweho, urukiko rumuhamya icyaha cyo gusambanya umwana rumuhanisha igifungo cy'imyaka cy'imyaka makumyabiri (20). Uregwa yajuriye murukiko Rukuru urugereko rwa Musanze avuga ko arengana kuko azira akagambane k'abakoreshaga uwo mukobwa, agasaba ko uru rukiko rwabanza kumva uvugwaho kuba yarasambanyijwe warwandikiye agaragaza ko nta byabayeho, ko ahubwo yabihatiriwe n'aho yabaga.

Mu iburanisha, Urukiko rwabanje kumva Umuhoza Jeannette asobanurira urukiko ko inyandiko ivuga ko atasambanyijwe ishinjura Tuyisenge ari we wayanditse ntawe ubimusunikiye kuko yamubeshyeye kubera akoshyo k'abaturanyi ariko nyuma ahitamo kuza kugaragaza ukuri. Iyo nyandiko yayikoreye mu rugo. Asobanura ko yamubeshyeye kubera abantu benshi barimo abo mu rugo ababyeyi be; maze kubera ubwoba bituma abyemeza, niko kumurega ibyo atakoze. Nyuma yo kumva ubwo buhamya, Ubushinjacyaha, bwavuze ko uyu Manirumva yasobanuye ko ubwo yari atashye ageze hafi y'iwabo yumva abantu bavugira mu karima bavuga buhoro, agira amatsiko ajya kureba abaribo asanga Tuyisenge aryamye kuri Muhoza Jeannette amusambanya ahita atabaza abantu barahurura, hari n'undi wamushinje witwa Ruzindana Christophe wari ku irondo wasanze Manirumva avuga ko Tuyisenge yasambanyaga umuhoza, uyu yavuze ko aho yahise ahatoragura indangamuntu ya Tuyisenge yayihataye.

**Incamake y'icyemezo:** Ubuhamya bwuzuye kandi budashidikanywaho ni ubutangiwe mu rukiko. Bityo ubuhamya Umuhoza Jeannette yatangiye murukiko bushinjura uregwa kumusambanya nibwo bufite agaciro.

**Ubujurire bufite ishingiro.**

**Amategeko yakoreshejwe:**
Itegeko Nº027/2019 ryo kuwa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 111
Itegeko № 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 na 119

**Nta manza zifashishijwe.**

## Urubanza

# I. IMITERERE Y'URUBANZA

[1] Tuyisenge Jean Pièrre yahamijwe mu rubanza RP 00073/2020/TGI/RBV icyaha cyo Gusambanya umwana, yari akurikiranyweho n'Ubushinjacyaha yaburanye ahakana, ahanishwa igifungo cy'imyaka cy'imyaka makumyabiri (20).

[2] Tuyisenge Jean Pièrre ntiyanyuzwe n'imikirize y'uwo rubanza rwamuhamije icyo cyaha, arujuririra mu Rukiko Rukuru - Urugereko rwa Rwamagana, aho ikirego cyabo cyahawe N°RPA 00319/2021/HC/MUS. Ubujurire bwe bwasuzumwe mu muhezo, yitabye yiburanira n' uvugwaho guhohoterwa nawe yitabiriye iburanisha.

[3] Uko ikirego gikurikirana uwajuriye giteye, Ubushinjacyaha ku Rwego Rwisumbuye rwa Musanze, bukurikiranye imbere y'Urukiko Rwisumbuye rwa Rubavu uwitwa Tuyisenge Jean Pièrre ku cyaha bumukekaho cyo gusambanya umwana w'umukobwa witwa Umuhoza Jeannette w'imyaka 17 y'amavuko; icyaha akekwaho kuba yarakoze ku italiki ya 27/01/2020 ahagana saa tatu za ninjoro, ari mu Mudugudu wa Kiramira, Akagari ka Ngando, Umurenge wa Kabatwa, Akarere ka Nyabihu, Intara y'Iburengerazuba. Uko byagenze bisobanurwa bivugwa ko Tuyisenge Jean Pièrre yahuye na Umuhoza Jeannette ubwo yari agiye kugura ama unité ya telephone Tuyisenge Jean Pièrre ahita amuryamisha hasi, amwambura ikariso aramusambanya, arangije acika ubutabera; dosiye ishyikirizwa Ubushinjacyaha atangira gukurikiranywa nk'uwatorotse ubutabera muri dosiye RP00073/2020/TGI/RBV; hanyuma uregwa yaje gufatwa ashyikirizwa urwego rw'Ubugenzacyaha hongera gukorwa indi dosiye RP00218/2020/TGI/RBV; yahujwe na RP00073/2020/TGI/RBV kugira ngo ziburanishirizwe hamwe muri iyi numero.

[4] Ubushinjacyaha buvuga ko ibimenyetso bushingiraho bumurega icyo cyaha, n'ubwo bwose uregwa ahakana icyaha, ari uko yemera ko yahuye na Umuhoza Jeannette abimushinja, kandi bikimara kuba akaba yarahise atoroka ubutabera ndetse hakaba hari raporo ya muganga igaragaza ibyo basanze mu gitsina cya Umuhoza Jeannette, kandi icyemezo cy'amavuko kigaragaza ko Umuhoza yari afite imyaka 17ans y'amavuko ubwo yasambanywaga. Uregwa nawe yemera ko kuva igihe icyo cyaha cyaba yahise ajya iwabo muri Nyakiriba aho avuga ko hari uwaje akamukubita. Ubushinjacyaha bwamusabiye guhanishwa igifungo cy'imyaka 25.

[5] Tuyisenge Jean Pièrre yireguriye ahakana icyaha akurikiranyweho n'Ubushinjacyaha, akavuga ko ku itariki ya 27/1/2020 yasohotse agiye kureba inka ye asanga Manirumva na mwenenyina bamutegeye ku kiraro cye baramukubita, ababaza icyo bamuhora, bamusubiza ko yasambanyije mushiki wabo, Umuhoza Jeannette, ari nabwo yabahungiraga iwabo muri Nyakiriba.

[6] Urukiko rwamuhamije icyo cyaha, rumuhanisha igifungo cy'imyaka cy'imyaka makumyabiri (20).

[7] Tuyisenge Jean Pièrre ajurira avuga ko arengana kuko azira akagambane k'abakoreshaga uwo mukobwa, agasaba ko uru rukiko rwabanza kumva uvugwaho kuba yarasambanyijwe warwandikiye agaragaza ko nta byabayeho, ko ahubwo yabihatiriwe n'aho yabaga.

[8] Urukiko rwabanje kumva Umuhoza Jeannette watangarije uru rukiko ibi bikurikira: Iyi nyandiko ishinjura Tuyisenge ni we wayanditse ntawe ubimusunikiye kuko asanze arena yaramubeshyeye kubera akoshyo k'abaturanyi ariko nyuma ahitamo kuza kugaragaza ukuri. Iyo nyandiko yayikoreye mu rugo. Asobanura ko yamubeshyeye kubera abantu benshi barimo abo mu rugo ababyeyi be; maze kubera ubwoba bituma abyemeza, niko kumurega ibyo atakoze.

[9] Tuyisenge Jean Pièrre asobanura ko iwabo aribo bamwoheje, mubamwoheje hakaba harimo musaza we uwitwa Manirumva.

[10] Urukiko rwanumvise Havugimana Samuel (Musaza wa Muhoza Jeannette) wemeje ko Tuyisenge atigeze asambanya Muhoza Jeannette, ko ari akagambane ka murumuna we witwa Manirumva, akavuga kobaturanye bose, ko bari barimo kuganira uwo murumuna we ahita asakuza ngo afashe Tuyisenge asambanya mushiki wabo amubeshyera yari asanze bahagararanye gusa. Abant bose bahise bahurura bahamagarama nyine ubabyara aho yararwaje umwana mu bitaro bya Ruhengeri noneho nawe aho aziye ahita atanga ikirego kuri RIB avuga ko ataba yaracumbikiye umuntu ngo atangire amusambanyirize umukobwa, uyu Tuyisenge twari dutuye mu marembo amwe ntagira ise ntagira nyina nta namwene wabo, nibo basaga n’ abamurera.

[11] Ubushinjacyaha, nyuma y’ubwo buhamya, bwavuze ko uyu Manirumva yasobanuye ko ubwo yari atashye ageze hafi y'iwabo yumva abantu bavugira mu karima bavuga buhoro, agira amatsiko ajya kureba abaribo asanga Tuyisenge aryamye kuri Muhoza Jeannette amusambanya ahita atabaza abantu barahurura, hari n'undi wamushinje witwa Ruzindana Christophe wari ku irondo wasanze Manirumva avuga ko Tutyisenge yasambanyaga umuhoza, uyu yavuze ko aho yahise ahatoragura indangamuntu ya Tuyisenge yayihataye. Ikindi n’uko raporo ya muganga yagaragaje ko ku gitsina cya Umuhoza yahasanze udusebe; ikimenyetso cya 4 ni raporo y'inzego z'ibanze zagaragaje ko icyo gikorwa kikimara kuba yahise ahunga, kuko bwakeye zimushaka zikamubura.

[12] Tuyisenge Jean Pièrre yabajijwe impamvu ki nyuma yabyo yahise aburirwa irengero, asobanura ko icyo gihe yari afite umwana urwaye, icyo gihe banshaka nari nagiye kuri hospital kumurwaza, kuko nyuma akimara kumva ko yarezwe yijyanye kuri police kubaza impamvu yabyo, ko iyo aza kuba ariwe wakoze icyo gikorwa siwe wari kwijyana kuri RIB. Asobaura ko icyo apfa na Manirumva wamugeretseho urwo rusyo yoshya uwo mwana ari uko bapfa ko umugore we yahukanye ubwo bari bagiranye amakimbirane, amusigira igifurumba cy'imyenda, umugabo we niko kumugirira inzika, avuga ko ariwe wagize uruhare mu gusenyuka k'urugo rwe kandi baramucumbikiye nk’ umwimukira uvuka mu Karere ka Rubavu. Ikindi uretse indangamuntu yazimiriye kandi siyo gusa kuko harimo n'ibindi byangombwa ndetse n'amafaranga, bitavuzwe.

[13] Igisuzumwa muri uru rubanza: Ese koko uwajuriye yaba yarahamijwe icyaha cyo gusambanya umwana nyamara hari ugushidikanya kumurengera.

## II. ICYAGARAGARIYE URU RUKIKO N’UKO RUSESENGURA IKIBAZO

[14] Icyagaragariye uru rukiko n’uko:

- Umuhoza Jeannette washinje Tuyisenge Jean Pièrre uregwa icyaha cyo kumusambanya, yaje muri uru rukiko rw’ ubujurire ashinjura uregwa, aho yagaragaje ko yamubeshyeye abitewe n’ubwoba bw’ umuryango we, bikaba byarakozwe na musazawe wabimushyizemo, na nyina abisamira hejuru.
- Undi musaza we (wa Muhoza Jeannette) Havugimana Samuel yemeje mu rukiko ko Tuyisenge Jean Pièrre atigeze asambanya Muhoza Jeannette, ko ari akagambane ka murumuna we witwa Manirumva wabitegetse umwana, ko yabasanze barimo kuganira ahita asakuza ngo afashe Tuyisenge Jean Pièrre asambanya mushiki wabo abeshya kandi bari habagararanye gusa; ubwo abantu bahise bahurura bahamagara nyina ubabyara aho yararwaje umwana mu bitaro bya Ruhengeri noneho nawe aho aziye ahita atanga ikirego kuri RIB;
- Tuyisenge Jean Pièrre wajuriye yagaragaza ko icyo apfa na Manirumva wamugeretseho urwo rusyo yoshya uwo mwana, ari uko bapfa ko umugore we yahukanye ubwo bari bagiranye amakimbirane, amusigira igifurumba cy'imyenda, umugabo we niko kumugirira inzika, avuga ko ariwe wagize uruhare mu gusenyuka k'urugo rwe kandi baramucumbikiye nk’umwimukira uvuka mu Karere ka Rubavu. Ikindi asobanura ko atari gusa indangamuntu ye yamwambuye

ko harimo n'ibindi byangombwa ndetse n'amafaranga, bitavuzwe kandi ko atatorotse, ko yacitse koko akaboneraho no kujya kurwaza umuntu.

- Amakuru yose yagendeweho hakorwa dosiye, ni ayatanzwe n' uwamugambaniye Manirumva wageretse kuri Tuyisenge Jean Pièrre urwo rusyo yoshya uwo mwana,

[15] Ingingo ya 119 y'itegeko № 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Mu gika cya 2 cy'iyo ngingo kikavuga ko urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura aribyo kandi ko bishobora kwemerwa;

[16] Ingingo ya 3 y'itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana;

[17] Ingingo ya 111 y'Itegeko Nº027/2019 ryo kuwa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha igira iti:" gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze;

[18] Uru rukiko ruhuje uko ibintu byagenze (kutavugwaho rumwe hagati y' uregwa n'Ubushinjacyaha) n'ibyarugaragariye hamwe n'ibiteganywa n'izo ngingo z'amategeko; rurasanga kuba isoko y'amakuru yonyine igizwe na Manirumva ufite icyo apfa na Tuyisenge Jean Pièrre uregwa, watanze amakuru yashingiweho n'ababajijwe bose, no kuba kandi umwana amushijura ndetse n' undi musazawe, aho bagaragaza ko umwana yamushinje kubera guterwa ubwoba n'uwo musaza we ndetse na nyina; bihagije kurengera uregwa ngo agirwe umwere kubwo gushidikanya kumurengera; dore ko n'umuhamya bwuzuye kandi budashidikanywaho ari ubutangiwe mu rukiko.

[19] Kubera rero izo mpamvu zose, uru rukiko rurasanga hari ugushidikanya gukomeye, kurengera Tuyisenge Jean Pièrre uregwa wajuririye; bityo akaba koko yarenganurwa agirwa umwere ku cyaha yahamijwe cyo gusambanya umwana; akaba agomba kurekurwa.

[20] Ku bw'ibyo rero, urubanza rwajuririwe rurahindutse mu ngingo zarwo zose.

## III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko ubujurire bwa Tuyisenge Jean Pièrre bufite ishingiro;

[22] Rwemeje ko, agizwe umwere ku cyaha cyo gusambanya umwana.

[23] Rutegetse ko arekurwa.

[24] Rwemeje ko urubanza rwajuririwe ruhindutse mu ngingo zarwo zose. Ntirwasomewe igihe kubera akazi kenshi.