

UBUSHINJACYAHA v. UWAMURENGEYE

[Rwanda URUKIKO RW'IKIRENGA – 2014SC – RPAA 0110/10/CS (Kayitesi Zainabo, P.J., Mukanyundo na Gakwaya, J.) 31 Mutarama 2014]

Amategeko mpanabyaha – Ubwicamubyeyi – Gukubita no gukomeretsa umubyeyi mu cyico bikamuviramo urupfu bigaragaza umugambi wo gukora icyaha cy'ubwicanyi – Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'Amategeko Ahana, ingingo ya 314.

Amategeko agenga imiburanishirize y'ianza nshinjabyaha – Guhindura inyito y'icyaha – Uburenganzira n'inshingano by'umucamanza bwo guhindura inyito y'icyaha mu Rukiko rw'ubujurire kubera iburabubasha – Urukiko rufite ububasha bwo kuburanisha urwo rubanza nyuma yo guteshwa agaciro – Urubanza rutangirira mu Rukiko rufite ububasha ku rwego rwa mbere – Itegeko n°30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'ianza z'inshinjabyaha, ingingo ya 190, igika cya 2.

Incamake y'ikibazo: Uwajuriye yakurikiranyeho icyaha cyo gukubita no gukomeretsa nyina bikamuviramo gupfa imbere y'Urukiko Rwisumbuye rwa Rusizi rwamuhamije icyaha rumuhanisha igifungo cy'imyaka icumi (10) n'ihazabu y'amafaranga ibihumbi ijana (100.000frw).Yajuririye Urukiko Rukuru, Urugereko rwa Rusizi maze mu iburanisha, Ubushinjacyaha busaba ko Urukiko rwahindura inyito y'icyaha, uregwa agakurikiranwaho ubwica-mubyeyi, asaba ko Urukiko rwemeza ko urubanza rwaciwe n'Urukiko Rwisumbuye ruvuyeho, iburanisha rigatangirira bwa mbere mu Rukiko Rukuru kubera ko ari rwo rufite ububasha.

Urukiko Rukuru rwasanze ubujurire nta shingiro bufite naho ku cyifuzo cy'ubushinjacyaha, rwavuze ko butari bwajuriye kandi guhindura inyito y'icyaha bishobora kugira ingaruka yo kongera igihano maze rwemeza ko icyifuzo cy'ubushinjacyaha kitakiriwe. Ubushinjacyaha bwajuririye icyo cyemezo mu Rukiko rw'Ikirenga bugaragaza ko icyaha cyakozwe ari ubwicamubyeyi aho kuba gukubita no gukomeretsa kikaba kigomba kuburanishwa ku rwego rwa mbere mu Rukiko Rukuru mu gihe Uwamurengye Venant we aburana ahakana ko atigeze agira umugambi wo kwica umubyeyi we.

Incamake y'icyemezo: 1. Kuba inyandiko ya muganga n'abatangabuhamya bemeza ko nyakwigendera yazize igice cy'urubaho yakubiswe mu mutwe bigaragaza ubushake bwo gukora icyaha cy'ubwicanyi.

2. Guhindura inyito y'icyaha ni uburenganzira ndetse n'inshingano by'umucamanza bityo uregwa agomba gukurikiranwaho icyaha cy'ubwica-mubyeyi bityo imanza zaciwe mbere zikavanwaho kuko zaburanishijwe n'inkiko zidafite ububasha hakurikijwe inyito y'icyaha.

3. Hashingiwe ku ifasi icyaha cyakorewemo, Urukiko Rwisumbuye rwa Rusizi ni rwo rufite ububasha bwo kuburanisha Uwamurengye Venant ku cyaha cy'ubwicamubyeyi ku rwego rwa mbere.

**Ubujurire bw'Ubushinjacyaha bufite ishingiro.
Inyito y'icyaha cyakozwe n'uregwa ni ubwicamubyeyi aho kuba gukubita no
gukomeretsa byaviriyemo nyina gupfa.
Imanza zaciwe mbere zivuyeho.**

**Urubanza ku cyaha cy'ubwica-mubyeyi ruzatangirira ku rwego rwa mbere mu Rukiko
Rwisumbuye rwa Rusizi.
Amagarama aherereye ku isanduku ya Leta.**

Amategeko yashingiweho:

Itegeko-Ngenga n° 02/2013/OL ryo kuwa 16/06/2013 rihindura kandi ryuzuzanya Itegeko-Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ingingo ya 10.
Itegeko n° 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 190, igika cya 2.
Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'Amategeko Ahana, ingingo ya 314.

Ibyemezo by'inkiko byifashishijwe:

Ubushinjacyaha v. Nyawera Célestin, RPAA 0033/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 14/09/2012, igika cya 6.
Ubushinjacyaha v. Caporal Ngabonziza, RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 17/11/2010, igika cya 18.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rusizi, Uwamurengeye Vénant akurikiranweho icyaha cyo gukubita no gukomeretsa Nyina umubyara bikamuviramo urupfu. Urukiko rwasanze icyaha kimuhama rumuhanisha igifungo cy'imyaka 10 n'ihazabu ya 100.000Frw.

[2] Uwamurengeye ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru, Urugereko rwa Rusizi. Mu gihe cy'iburanisha, Ubushinjacyaha bwavuze ko impamvu z'ubujurire za Uwamurengeye nta shingiro zifite, kandi ko Urukiko rukwiye guhindura inyito y'icyaha, uregwa agakurikiranwaho icyaha cy'ubwica-mubyeyi kubera ko yari asanzwe afitiye Nyina inzika amuziza ko yamuroze kandi ko yamuhondaguye urubaho mu cyico, bityo Urukiko rukemeza ko Urubanza rw'Urukiko Rwisumbuye ruvuyeho, iburanisha rigatangirira bwa mbere mu Rukiko Rukuru kubera ko ari rwo rufite ububasha bwo kuburanisha ubwica-mubyeyi ku rwego rwa mbere.

[3] Ku bujurire bwa Uwamurengeye Vénant, Urukiko rwasanze ibyo uwajuriye anenga imikirize y'urubanza rwa mbere nta shingiro bifite nuko rwemeza ko nta gihindutse ku rubanza rwajuririwe. Naho ku cyifuzo cy'Ubushinjacyaha, Urukiko rwasanze Ubushinjacyaha butari bwajuriye kandi ko guhindura inyito y'icyaha bishobora kugira ingaruka zo kwongera igihano, nuko rushingiye ku ngingo ya 174 y'Itegeko No 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha rwemeza ko icyifuzo cy'Ubushinjacyaha kitakiriwe.

[4] Ubushinjacyaha bwajuririye iki cyemezo mu Rukiko rw'Ikirenga. Iburanisha ryabaye kuwa 23/12/2013, Uwamurengeye Vénant ahari kandi yunganiwe na Me Umulisa Alice naho Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba inyito y'icyaha UWAMURENGEYE Venant akurikiranyweho ikwiye guhinduka n'ingaruka zabyo.

[5] Uhagarariye Ubushinjacyaha avuga ko, mu Rukiko Rwisumbuye, Uwamurengye Vénant yakurikiranyweho icyaha cyo gukubita no gukomeretsa Nyina umubyara bikamuviramo urupfu, nyamara hari ibimenyetso bigaragaza ko mbere y'uko yica Nyina, yari amufitiye inzika y'uko yamuroze, ko yamukubise igice cy'urubaho inshuro ebyiri mu mutwe kandi mu cyico, ibi byose bikaba bigaragaza umugambi yari afite wo kumwica, ko icyaha cyakozwe ari ubwica-mubyeyi aho kuba gukubita no gukomeretsa, kikaba kiri mu bubasha bw'Urukiko Rukuru.

[6] Ubushinjacyaha buvuga kandi ko niyo hataza kugira ubisaba, byari inshingano y'Umucamanza kwibwiriza no kwemeza ko urubanza rutangirira mu Rukiko Rukuru hashingiwe ku ngingo ya 89 y'Itegeko-Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, bityo Urukiko rw'Ikirenga rukaba rukwiye gutegeka ko uru rubanza rutangirira mu Rukiko Rukuru, Urugereko rwa Rusizi. Uhagarariye Ubushinjacyaha yongeraho ko cyakora adatsimbaraye kuri iyi ngingo y'ubujurire, ahubwo ko Urukiko rw'Ikirenga rwabifataho icyemezo mu bushishozi bwarwo, ko rusanze uregwa nta mugambi yari afite wo kwica Nyina nta kibazo Ubushinjacyaha bubifiteho.

[7] Uwamurengye avuga ko nta mugambi yigeze agira wo kwica Nyina, ko muri dosiye harimo ibimenyetso bikubiyemo imvugo ya Se n'iz'abavandimwe be zigaragaza ko mu myaka 25 yabanye n'ababyeyi be ntacyo yigeze apfa na Nyina, ko ibyo yavuze ko Nyina yamuroze akanaroga abavandimwe be atazi aho yabivanaga kuko ariwe wishyikiraga kuri Nyina kurusha abandi bana bavukana, ko nawe atazi uko byamugendekeye kugira ngo akubite Nyina bimuviremo gupfa, ariyo mpamvu avuga ko atari muzima icyo gihe kuko atari azi ibyo akora. Yongeraho ko iby'Ubushinjacyaha buvuga ko yaba yari afitiye nyina inzika y'uko yari yamuroze nta shingiro bikwiye guhabwa cyane cyane ko bishingira ku mvugo ye mu Bugenzacyaha aho yabajijwe nyuma y'icyumweru ari mu Bitaro ahabwa imiti isinziriza kubera uburwayi bwo mu mutwe yari arwaye. Asobanura kandi ko, n'ubwo avuga ko yari arwaye indwara yo mu mutwe, na Se akaba yaramuvuzaga iyo ndwara ku witwa André, atabifitiye inyandiko ya muganga kubera ko abavandimwe be bari kubimufashamo bose bamwanze, kuva aho nyina apfiriye. Ku bijyanye no kuba yarahondaguye Nyina mu cyico, avuga ko yemera ko yamukubise igice cy'urubaho inshuro imwe gusa mu mutwe ariko ko abisabira imbabazi, akaba asaba Urukiko ko yarekurwa akajya kwiyunga n'umuryango we.

[8] Me Umulisa wunganira Uwamurengye avuga ko hari ibimenyetso bigaragaza ko Uwamurengye yari afite ikibazo cy'imyitwarire mu gihe yakoraga icyaha, nko kuba yari amaze iminsi ashaka gusenya inzu y'ababyeyi be, kujunjama, kujugunya ibintu mu musarane no kurwana, ko no kugira ngo afatwe, Polisi yakoresheje imbaraga nyinshi ndetse bakanamutera imiti isinziriza yitwa "Phenergan". Yongeraho ko ibi byose bavuga bitagamije kugaragaza ko nta buryozwacyaha buhari ahubwo ko ari ibimenyetso by'uko Uwamurengye atigeze acura umugambi wo kwica Nyina nk'uko Ubushinjacyaha bubivuga. Me Umulisa avuga kandi ko uregwa atakubise Nyina ngo ahite apfa kuko yaguye mu nzira bamujyana kwa muganga, ko ibyo rero bititwa ubwica-mubyeyi, bityo akaba asanga inyito y'icyaha idakwiye guhinduka.

[9] Ingingo ya 314 y'Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'Amategeko Ahana cyakoreshwaga icyo gihe, iteganya ko: "Byitwa ubwica-mubyeyi, ubwicanyi bugiriwe Se cyangwa Nyina...".

[10] Naho ingingo ya 321 y'Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 ryavuzwe haruguru ikavuga ko: "Iyo gukubita cyangwa gukomeretsa ku bushake ariko nta gitekerezo cyo kwica kiraho byateye urupfu, nyiri icyaha azahanishwa igifungo kuva ku myaka itanu kugeza kw'icumi n'ihazabu itarenga ibihumbi icumi. Azahanishwa igifungo kuva ku myaka icumi kugeza kuri cumi n'itanu iyo yakoze urwo rugomo yabigambiriye cyangwa yabanje kujya mu gico".

[11] Urukiko rurasanga n'ubwo Uwamurengeye Vénant avuga ko yica Nyina atari yabigambiriye kuko yabikoze arwaye indwara yo mu mutwe, akaba nta nicyo yapfaga na Nyina, abavandimwe be na se bakavuga ko yajunjamaga, naho umwunganira akavuga ko akora icyaha yari afite imyifatire idasanzwe nko gushaka kurwana no gusenya inzu y'ababyeyi be; ntaho rwahera ruvuga ko igihe yakoraga icyaha yararwaye mu mutwe kuko nta bimenyetso bagaragarije Urukiko byemeza ko Uwamurengeye yari afite uburwayi bwo mu mutwe ubwo yakoraga icyaha.

[12] Urukiko rurasanga rero, hashingiwe kuri dosiye y'urubanza, Uwamurengeye Vénant yarakubise nyina Nyirabazungu Thérésie ikibaho mu mutwe aramukomeretsa bikomeye apfa ageze kwa muganga mu Bitaro bya Bushenge (cote 1), ibi bikaba bishimangirwa n'invugo ya Hagenimana Fabien na Nyirabwimana Théopiste, abavandimwe ba Uwamurengeye, bemeza ko uregwa yakubise Nyina igice cy'urubaho mu mutwe akamukomeretsa akaza kugwa mu nzira bamujyanye ku Bitaro, Inyandiko ya Muganga (Expertise Médico-Légale) nayo ikaba ivuga ko Nyirabazungu Thérésie yazize igice cy'urubaho yakubiswe ku mutwe (cote 10), bityo akaba nta gushidikanya guhari ko icyateye urupfu rwa Nyirabazungu Thérésie ari igice cy'urubaho yakubiswe mu mutwe n'umuhungu we Uwamurengeye Vénant, kandi kuba yarakubise Nyirabazungu igice cy'urubaho mu mutwe (mu cyico) bikaba bigaragaza ubushake bwo gukora icyaha cy'ubwicanyi.

[13] Ku byerekeye inyito y'icyaha, nk'uko byemejwe n'uru Rukiko mu urubanza hagati y'Ubushinjacyaha na Nyawera Célestin¹, ndetse n'urubanza hagati y'Ubushinjacyaha na Caporal Ngabonziza², guhindura inyito y'icyaha ku mucamanza ni uburenganzira ndetse n'inshingano bye. Urukiko rurasanga rero hashingiwe ku bisobanuro bimaze gutangwa haruguru, no ku ngingo ya 314 y'Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 ryavuzwe haruguru ryakurikizwaga icyaha gikorwa, Uwamurengeye Vénant akwiye gukurikiranwaho icyaha cy'ubwica-mubyeyi; bityo urubanza RP.0149/08/TGI/RSZ rwaciwe n'Urukiko Rwisumubuye rwa Rusizi kuwa 19/02/2009 ndetse n'urubanza RPA 0151/09/HC/RSZ rwaciwe mu bujirire n'Urukiko Rukuru, Urugereko rwa Rusizi zikaba zikwiye kuvaho, kuko zaburanishijwe n'Inkiko zitabifiye ububasha hakurikijwe inyito y'icyaha.

[14] Kubirebana n'urubanza k'ubwica-mubyeyi, Urukiko rurasanga, hashingiwe ku ngingo ya 190, igika cya 2 y'Itegeko No 30/2013 ryo kuwa 24/05/2013 ryerekeye imburanishirize

¹Ubushinjacyaha v. Nyawera Célestin, RPAA 0033/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 14/09/2012, igika cya 6.

²Ubushinjacyaha v. Caporal Ngabonziza, RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 17/11/2010, igika cya 18.

y'imanza z'inshinjabyaha, ivuga ko: "Urukiko rutesheje agaciro urubanza rwajuririwe rutaruburanisha bundi bushya mu mizi yarwo. Ababuranyi bashobora ariko kongera kuregera bundi bushya urukiko rwo ku rwego rwa mbere mu gihe bishoboka gukosora amakosa aba yakozwe; urwo rubanza rukwiye gutangirira mu Rukiko rubifitiye ububasha.

[15] Urukiko rurasanga rero, hashingiwe ku ngingo ya 10 y'Itegeko-Ngenga n° 02/2013/OL ryo kuwa 16/06/2013 rihindura kandi ryuzuzwa Itegeko-Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujijwe kugeza ubu ndetse no ku ifasi icyaha cyakorewemo, Urukiko Rwisumbuye rwa Rusizi ari rwo rufite ububasha bwo kuburanisha Uwamurengeye Vénant ku cyaha cy'ubwica-mubyeyi ku rwego rwa mbere.

III. ICYEMEZO CY'URUKIKO

[16] Rwemeje ko ubujurire bw'Ubushinjacyaha bufite ishingiro.

[17] Rwemeje ko inyito y'icyaha cyakozwe na Uwamurengeye Vénant ari ubwica-mubyeyi aho kuba gukubita no gukomeretsa byaviriyemo nyina gupfa.

[18] Rutegetse ko urubanza RP.0149/08/TGI/RSZ rwaciwe n'Urukiko Rwisumbuye rwa Rusizi kuwa 19/02/2009 ndetse n'urubanza RPA 0151/09/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi zivuyeho.

[19] Rutegetse ko urubanza ku cyaha cy'ubwica-mubyeyi Uwamurengeye Venant akurikiranweho n'Ubushinjacyaha rutangirira ku rwego rwa mbere mu Rukiko Rwisumbuye rwa Rusizi.

[20] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.