

## UBUSHINJACYAHA v. NGIRABABYEYI

[Rwanda URUKIKO RW'IKIRENGA – RPAA 0086/ 10/CS (Mukanyundo, P.J.,  
Hatangimbabazi na Gakwaya, J.) 16 Gicurasi 2014]

*Amategeko agenga ibimenyetso – Gusambanya umwana – Kugaragaza ibimenyetso ko uwasambanyijwe ari umwana – Icyemezo cy'amavuko cyatanzwe n'umukozi wa Leta ufite ububasha bwo kugikora cyangwa icyemezo cy'umuganga ni byo byonyine bishobora kugaragaza imyaka y'amavuko y'umuntu – Kutagaragaza iki kimenyetso bitera gushidikanya ku mikorere y'icyaha kandi gushidikanya kurengera ushinchwa – Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.*

**Incamake y'ikibazo:** Ngirababyeyi Thomas yarezwe icyaha cyo gusambanya umwana w'imyaka 13. Yahamijwe icyaha maze ahanishwa igifungo cy'imyaka 25. Yajuririye mu Rukiko Rukuru rugumishaho imikirize y'urukiko rwarubanjirije. Yajuririye mu Rukiko rw'Ikirenga avuga ko yavukijwe uburenganzira ahabwa n'amategeko bw'umuntu wese wagaragaje ukuri ku cyaha ashinjwa akanagisabira imbabazi, asaba kugabanyirizwa igihano.

Ngirababyeyi Thomas yavuze ko yemera kuba yarasambanyije Uzamukunda Marie Rose ariko akaba yarabikoze babyumvikanyeho. Umwunganira mu mategeko we avuga ko hagomba kugaragazwa ikigaragaza ko uwasambanyijwe koko yari afite imyaka 13, cyabura uwo yunganira akaba atahanirwa gusambanya umuntu mukuru kuko atari byo yarezwe. Kuri iki kibazo Ubushinjacyaha buvuga ko bwabuze icyo cyemezo. Ariko bwasoje buvuga ko Urukiko rwahera ku bimenyetso bicukumbuwe no gusesengura urubanza (présomption humaine) kuko nabyo byemewe mu mategeko cyane ko na Ngirababyeyi Thomas mu ibazwa rye mu nzego zabanje yi yemereraga ko yasambanyije umwana ariko ageze mu Rukiko rwajuririwe avuga ko yabonaga uwo mukobwa afite imyaka nka 20.

**Incamake y'icyemezo:** Kuba Ubushinjacyaha bwarananiwe kugaragaza ko uwasambanyijwe yari umwana koko igihe kivugwa ko icyaha cyakorwaga bituma habaho ugushidikanya. Ibyo Ubushinjacyaha busaba ko hashingirwa ku bimenyetso bicukumbuwe no gusesengura urubanza nta shingiro bifite kuko icyemezo cy'amavuko cyatanzwe n'umukozi wa Leta ubifitiye ububasha bwo kugikora cyangwa icyemezo cy'umuganga byonyine aribyo bishobora kugaragaza imyaka y'amavuko y'umuntu. Bityo rero, icyaha yari akurikiranyweho ntikimuhamma kuko imyaka y'Uzamukunda Marie-Rose itagaragarijwe ikimenyetso.

**Ubujurire bufite ishingiro.  
Urubanza rwajuririwe ruhindutse kuri byose.  
Uwajuriye ahanaguweho icyaha cyo gusambanya umwana.  
Uwajuriye agomba guhita arekurwa.  
Amagarama y'urubanza aherezwe ku isanduku ya Leta**

**Amategeko yashangiweho:**

Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

**Imanza zifashishijwe:**

Ubushinjacyaha v. Sebiteke, RPAA 015/10/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/02/2014.

**Inyandiko z'abahanga:**

J.-François Renucci et C.Courtin, Le Droit pénal des mineurs, 4è. éd., PUF, Paris, 1991, p.4.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Uru rubanza rwanangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ngirababyeyi Thomas aregwa icyaha cyo gusambanya umwana muto witwa Uzamukunda Marie-Rose. Uru Rukiko rwaciye urubanza RP 0139/06/TGI/GSBO kuwa 29/05/2006 rwemeza ko icyaha aregwa kimuhama, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25ans) no gutanga amagarama y'urubanza angana na 10.950 Frw.

[2] Ngirababyeyi Thomas ntiyishimiye imikirize y'urubanza maze arujurira mu Rukiko Rukuru. Uru Rukiko ruca urubanza RPA 0992/06/HC/KIG kuwa 05/01/2010, rwemeza ko icyaha aregwa kimuhama, rutegeka ko imikirize y'urubanza RP 0139/06/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo rugumyeho mu ngingo zarwo zose, uretse amagarama yagombaga gutangwa ahwanye na 17.700 Frw.

[3] Ngirababyeyi Thomas ntiyishimiye imikirize y'urubanza, ajurira mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwamuvukije uburenganzira Itegeko riha umuntu wese wagaragaje ukuri ku cyaha aregwa, ndetse akaba yarasabye imbabazi ku cyaha aregwa, nyuma Urukiko Rukuru rwirengagiza amategeko maze rumuhanisha igihano cy'imyaka 25 idasubitswe ndetse asaba ko hakurikizwa amategeko agenga imiburanishirize y'imanza z'ishinjabaya kuko yemera icyaha kandi akagisabira imbabazi.

[4] Iburanisha mu ruhame ryabaye kuwa 17/3/2014, Ngirababyeyi Thomas yunganire na Me Dusenge Vestine naho Ubushinjacyaha buhagarariwe na Mutayoba Alphonse, Umushinjacyaha ku rwego rw'Ighugu.

### **II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO**

**Kumenya niba Ngirababyeyi Thomas yarasambanyije ku ngufu Uzamukunda Marie-Rose utarageza ku myaka y'ubukure.**

[5] Ngirababyeyi Thomas avuga ko impamu zamuteye kujurira ari uko yahawe ighano kirekire kandi yaraburanye yemera ko yasambanyije Uzamukunda Marie-Rose, ariko ko yabikoze babyumvikanayeho.

[6] Me Dusenge Vestine, wunganira Ngirababyeyi Thomas, avuga ko n'ubwo bwose yemera ko yasambanyije uwo mukobwa, nta kigaragaza ko Uzamukunda Marie-Rose yari ataruzuza imyaka y'ubukure cyane ko muri dosiye nta cyemezo cy'amavuko kirimo, kigaragaza ko yasambanyijwe akiri umwana. Asobanura ko ukwemera icyaha gusa bidahagije ngo hemezwe ko habayeho icyaha cyo gusambanya umwana, bityo akaba asanga ari ngombwa ko bigaragarira Urukiko ko Uzamukunda Marie-Rose yari umwana koko icyo

ighe bavuga ko yahohotewe ndetse ko icyemezo cy'amavuko cye cyonyine gishobora kubigaragaza.

[7] Me Dusenge Vestine asoza avuga ko niba bigaragaye ko nta kimenyetso gihama ko Ngirababyeyi Thomas yasambanyije umwana muto, atashinjwa icyaha cyo gusambanya umuntu mukuru kuko ataricyo yarezwe, bityo akaba asaba uru Rukiko ko mu guca urubanza rwazirinda kugenekereza ruhindura inyito y'icyaha kuko bitakwitwa gufata ku ngufu umwana muto mu gihe nta cyemezo cy'amavuko gihari cyerekana ko Uzamukunda Marie-Rose ari umwana.

[8] Uhagarariye Ubushinjacyaha avuga ko babuze aho bakura icyemezo cy'amavuko kigaragaza ko Uzamukunda Marie-Rose yasambanyijwe akiri umwana kuko bandikiye Inzego z'Ubuyobozi z'aho uwo mwana yabarizwaga, basubizwa ko nta aderesi (adresse) y' uwo mwana izwi, bityo rero ko ntaho bahera batanga icyo cyemezo, asaba Urukiko ko rwagendera ku mategeko rugafata ko uwo mukobwa yasambanyijwe akuze.

[9] Uhagarariye Ubushinjacyaha asoza ariko avuga ko mu gufata icyemezo, Urukiko rwazashishoza kuko n'ubwo bwose nta cyemezo cy'amavuko cyagaragajwe, ko ibimenyetso bicukumbuwe no gusesengura urubanza (présomption humaine) byemewe mu mategeko cyane ko na Ngirababyeyi Thomas mu ibazwa rye mu nzego zabanje yiymereye ko yasambanyije umwana ariko ageze muri uru Rukiko avuga ko yabonaga uwo mukobwa afite imyaka 20 kandi abeshya.

## UKO URUKIKO RUBIBONA

[10] Ingingo ya 165 y'Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko "ugushidikanya 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".

[11] Urukiko rw'Ikirenga rurasanga kuba Ubushinjacyaha butarabashije kugaragaza bidashidikanywaho ko Uzamukunda Marie-Rose uvugwa ko yasambanyijwe ari umwana, bituma haba ugushidikanya kuri kimwe kandi cy'ingenzi mu bigize icyaha, bityo ibivugwa n'Ubushinjacyaha y'uko hakurikizwa ikimenyetso gicukumbuwe no gusesengura urubanza kuko Ngirababyeyi Thomas yari yemeye ko yasambanyije umwana, nta shingiro bifite kubera ko icyemezo cy'amavuko cyatanzwe n'umukozi wa Leta ufite ububasha bwo kugikora cyangwa icyemezo cy'umuganga byonyine aribyo bishobora kugaragaza imyaka y'amavuko y'umuntu<sup>1</sup>. Kubera ibyo bisobanuro, hakaba hagomba kwemeza ko icyaha Ngirababyeyi Thomas aregwa cyo gusambanya umwana kitamuhamma<sup>2</sup>.

[12] Urukiko rw'Ikirenga rurasanga, hashingiwe ku ngingo ya 165 y'Itegeko n° 30/2013 ryavuzwe haruguru, icyaha cyo gusambanya Uzamukunda Marie-Rose utari wujuje imyaka y'ubukure (umwana), Ngirababyeyi Thomas akurikiranyweho kitamuhamma kuko imyaka ya

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<sup>1</sup> "C'est la production d'un acte de l'état de civil qui permettra de déterminer l'âge réel, mais si cet acte ne paraît pas fiable, ou s'il n'existe pas, il sera possible de calculer l'âge probable de l'individu en ayant recours à une expertise fondée sur la morphologie", J.-François RENUCCI et C. Courtin, *Le Droit pénal des mineurs*, 4<sup>e</sup> édition, PUF, Paris, 1991, p.4.

<sup>2</sup> Uyu ni umurongo wemejwe mu rubanza RPAA 015/10/CS rwaciwe n'uru Rukiko kuwa 28/2/2014, haburana Ubushinjacyaha v. Sebiteke Shamungabo.

Uzamukunda Marie-Rose itagaragarijwe ikimenyetso, kuba ishidikanywaho bikaba bimurengera, bityo rero icyah a kaba agomba kugihana gurwaho.

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

- [13] Rwemeje ko ubujurire bwa Ngirababyeyi Thomas bufite ishingiro.
- [14] Rwemeje ko imikirize y'urubanza RPA 0992/06/HC/KIG rwaciwe n'Urakiko Rukuru kuwa 5/1/2010 rujurirwa, ihindutse kuri byose.
- [15] Rwemeje ko icyaha cyo gusambanya umwana Ngirababyeyi Thomas akurikiranweho kitamuhamma, agihanaguweho.
- [16] Rutegetse ko Nyirababyeyi Thomas agomba kurekurwa uru rubanza rukimara gusomwa.
- [17] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.