NKURUNZIZA N'UNDI v. HAKIZIMANA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0054/12/CS (Nyirinkwaya, P.J., Hatangimbabazi na Hitiyaremye, J.) 3 Nyakanga 2010]

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Gusebanya – Indishyi z'akababaro – Uburyo bwo kuregera Urukiko – Indishyi z'ikurikiranarubanza n'igihembo cy'Avoka – Gusebanya bisobanura kwitirira undi igikorwa gishobora gutesha uwo muntu icyubahiro cyangwa agaciro cyangwa gishobora kumusuzuguza mu ruhame – Bishobora gukurikiranwa mu manza z'inshinjabyaha, nk'uko bishobora gukurikiranwa mu manza z'imbonezamubano – Muri uru rubanza, amagambo "les mauvais compagnies" na "l'irreconnaissance" nta kundi yakumvikana usibye ko abantu bayavugwaho bafite imyitwarire igayitse yo kutibuka ineza bagiriwe – Mu kugena indishyi z'akababaro, hagomba kwitabwa ku kuba udutabo Hakizimana na Twizeyimana bavuzwemo twaranyanyagijwe mu bantu batandukanye, Nkurunziza n'umugore we Nzayinganyiki bakaba batarigeze bagerageza kutugaruza mu bantu baduhaye cyangwa basaba imbabazi ku mugaragaro abo batesheje agaciro ngo bibe byahanagura mu bantu isura mbi babahesheje – Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, Hakizimana n'umugore we Twizeyimana barega Nkurunziza n'umugore we Nzayinganyiki kuba mu gihe bakoraga umunsi mukuru wo gutaha impamyabumenyi barasohoye agatabo bashyizeho amafoto y'abantu benshi maze ku rupapuro ruriho iya Hakizimana n'umugore we Twizeyimana bandikaho "les mauvais compagnies [sic] ", naho ku ifoto ubwayo bandikaho "l'irreconnaissance [sic] " maze babisabira indishyi z'akababaro zingana na 40.000.000Frw zo kuba barasebejwe na 1.000.000Frw yo gutangaza urubanza mu mvaho nshya.

Mbere y'iburanisha mu mizi, abaregwa bazamuye inzitizi y'iburabubasha bavuga ko nta kirego cy'inshinjabyaha cyabayeho kandi ko icyaha bashinjwa cyo gusebanya kibanza kuregerwa Komite y'Abunzi ariko Urukiko ruvuga ko iyo nzitizi nta shingiro ifite.

Mu mizi y'urubanza, uru Rukiko rwameje ko abaregwa bakoreye ikosa abarega ryo kubandagaza maze rubategeka kubishyura indishyi z'akababaro za 2.000.000Frw na 500.000Frw y'ikurikiranarubanza n'igihembo cy'avoka.

Nkurunziza na Nzayinganyiki bajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, bavuga ko urukiko rwa mbere rwaciye urubanza rutari mu bubasha bwarwo kuko ibyo baregwa ari ikibazo cy'inshinjabyaha kiri mu bubasha bwa Komite y'Abunzi, nabwo kikabanza kunyura mu bugenzacyaha. Bavugaga kandi ko urwo rukiko rwabaciye indishyi rutabanje kwerekana ko ibyo bakoze byakoranywe ubugome cyangwa ko atari ukuri. Urukiko Rukuru narwo rwemeje ko ubujurire bwabo nta shingiro bufite icyakora ko urubanza ruhindutse gusa ku bijyanye n'indishyi rubategeka kwishyura Hakizimana n'umugore we Twizeyimana 500.000Frw y'indishyi z'akababaro kuri buri wese, 250.000Frw y'igihembo cy'avoka na 100.000Frw y'ikurikirana rubanza, yose hamwe akaba 1.350.000Frw.

Hakizimana n'umugore we Twizeyimana bongeye kujurira mu Rukiko rw'Ikirenga bashingiye n'ubundi ku nzitizi bari batanze mbere icyakora mu iburanisha bavuga ko baretse inzitizi bazamuye ahubwo bibanda gusa ku ishingiro ry'indishyi baciwe bavuga urubanza rutagaragaje ibisabwa kugira ngo indishyi zitangwe aribyo ikosa (faute), ingaruka yaryo

(préjudice), n'aho bihuriye (lien de causalité), bityo bakaba basanga indishyi zatanzwe ntaho zishingiye.

Bavuga kandi ko nta bimenyetso byatanzwe bigaragaza ko bari bafite umutima wo kugira nabi igihe bashyiraga amafoto ya Hakizimana na Twizeyimana mu gatabo basohoye ko ahubwo bashakaga kugaragaza ubuzima Nkurunziza yanyuzemo, imibanire myiza yagiranye n'imiryango imwe n'itari myiza yagiranye n'abantu bamwe barimo Hakizimana.

Hakizimana na Twizeyimana bavuga ko batanze ibimenyetso byanditse bishingiye ku nyandiko Nkurunziza na Nzayinganyiki bateguye bagakwirakwiza mu bantu, ibyo bimenyetso bikaba bigaragaza ko bandagajwe bikabatesha agaciro n'icyubahiro, akaba rero asanga nta kosa umucamanza yakoze aha agaciro imiburanire yabo.

Incamake y'icyemezo: 1. Gusebanya bisobanura kwitirira undi igikorwa gishobora gutesha uwo muntu icyubahiro cyangwa agaciro cyangwa gishobora kumusuzuguza mu ruhame. Bishobora gukurikiranwa mu manza z'inshinjabyaha, nk'uko bishobora gukurikiranwa mu manza z'imbonezamubano hashingiwe ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

2. Urukiko rusanga amagambo "les mauvais compagnies" na "l'irreconnaissance" nta kundi yakumvikana usibye ko abantu bayavugwaho bafite imyitwarire igayitse yo kutibuka ineza bagiriwe, ibyo Nkurunziza akaba yarabishimangiye muri uru rukiko avuga ko itegeko ritarengera abantu ku gaciro badafite cyangwa abafite imyitwarire mibi "comportement immoral".

3. Mu kugena indishyi z'akababaro, hagomba kwitabwa ku kuba udutabo Hakizimana na Twizeyimana bavuzwemo twaranyanyagijwe mu bantu batandukanye, Nkurunziza n'umugore we Nzayinganyiki bakaba batarigeze bagerageza kutugaruza mu bantu baduhaye cyangwa basaba imbabazi ku mugaragaro abo bateshejе agaciro ngo bibe byahanagura mu bantu isura mbi babahesheje bityo hakaba hakwiye kugumaho indishyi z'akababaro za 2.000.000Frw Hakizimana na Twizeyimana bari bagenewe n'Urukiko Rwisumbuye rwa Musanze, cyane cyane ko Urukiko Rukuru rutagaragaje icyo rwashingiyeho rugabanya izo ndishyi, 40.000.000Frw basaba nayo akaba ari ikirenga ugereranyije n'ingaruka ikosa ryabagizeho.

Ubujurire nta shingiro bufite.
Ubujurire bwuririrye ku bundi bufite ishingiro kuri bimwe.
Amagarama y'urubanza aherereye ku bajuriye.

Amategeko yashingiweho:
Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana.
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubwo bateguraga umunsi mukuru wo gutaha impamyabumenyi ya Nkurunziza Apollinaire mu by'ubwubatsi, we n'umugore we Nzayinganyiki Elizabeth basohoye agatabo bashyizeho amafoto y'abantu benshi babandikaho ibintu bitandukanye. Ni muri urwo rwego bashyizemo amafoto ya Hakizimana Sylvain n'umugore we Twizeyimana Emeritha n'abandi bantu ku rupapuro rwanditseho "les mauvais compagnies [sic]", naho ku ifoto ubwayo bandikaho "l'irreconnaissance [sic]".

[2] Hakizimana Sylvain n'umugore we Twizeyimana Kwitonda Emeritha bareze Nkurunziza Apollinaire na Nzayinganyiki Elizabeth mu Rukiko Rwisumbuye rwa Musanze basaba indishyi z'akababaro zingana na 40.000.000Frw zo kuba barasebejwe na 1.000.000Frw yo gutangaza urubanza mu mvaho nshya.

[3] Urukiko Rwisumbuye rwa Musanze rwabanje gufata icyemezo ku nzitizi zari zabyukijwe n'abaregwa bavugaga ko ikirego kitagomba kwakirwa kubera ko nta kirego cy'inshinjabyaha cyabayeho, icyaha bashinjwa cyo gusebanya kikaba kandi gitangirira mu Bunzi, rwemeza ko izo nzitizi nta shingiro zifite.

[4] Urubanza mu mizi rwaciwe kuwa 11/01/2011, urukiko rwemeza ko Nkurunziza Apollinaire na Nzayinganyiki Elizabeth bakoreye ikosa Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha kuko babandagaje, rubategeka gufatanya kubishyura indishyi z'akababaro za 2.000.000Frw na 500.000Frw y'ikurikirana rubanza n'igihembo cy'avoka.

[5] Nkurunziza na Nzayinganyiki bajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, bavuga ko urukiko rwa mbere rwaciye urubanza rutari mu bubasha bwarwo kuko ibyo baregwa ari ikibazo cy'inshinjabyaha kiri mu bubasha bwa Komite y'Abunzi, nabwo kikabanza kunyura muri Polisi. Bavugaga kandi ko urwo rukiko rwabaciye indishyi rutabanje kwerekana ko ibyo bakoze byakoranywe ubugome cyangwa ko atari ukuri.

[6] Urukiko Rukuru rwaciye urubanza kuwa 27/04/2012, rwemeza ko ubujurire bwabo nta shingiro bufite, ko urubanza rwajuririwe ruhindutse gusa ku mubare w'indishyi zigomba gutangwa aho rwategetse abajuriye guha Hakizimana Sylvain na Twizeyimana Kwitonda indishyi z'akababaro za 500.000Frw kuri buri wese, 250.000Frw y'igihembo cy'avoka na 100.000Frw y'ikurikirana rubanza, yose hamwe akaba 1.350.000Frw.

[7] Nkurunziza Apollinaire na Nzayinganyiki Elizabeth na none bajuririye urwo rubanza mu Rukiko rw'Ikirenga kuwa 28/05/2012 ku mpamvu zimwe n'izari zatumye bajurira ubwa mbere.

[8] Urubanza rwaburanishijwe mu ruhame kuwa 27/05/2014, Me Nyirabuheta Béata yunganiye Nkurunziza Apollinaire kandi ahagarariye Nzayinganyiki Elizabeth, Me Nsengiyumva Straton yunganiye Hakizimana Sylvain kandi ahagarariye Twizeyimana Kwitonda Emeritha

[9] Mu iburanisha, abajuriye bavuze ko baretse inzitizi baburanye guhera mu rwego rwa mbere, ubujurire bwabo bukaba bwibanda ku ishingiro ry'indishyi zatanzwe.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURWA RYABYO:

1° Kumenya niba Nkurunziza Apollinaire na Nzayinganyiki Elizabeth baraciwe indishyi hatagaragajwe ikosa bakoze.

[10] Me Nyirabuheta uburanira Nkurunziza Apollinaire na Nzayinganyiki Elizabeth avuga ko kugira ngo indishyi zitangwe hagomba kugaragazwa ikosa (faute), ingaruka yaryo (préjudice), n'aho bihuriye (lien de causalité), ko nta na kimwe muri ibyo cyagaragajwe muri uru rubanza, akaba rero asanga indishyi zatanzwe ntaho zishingiye.

[11] Avuga kandi ko nta bimenyetso byatanzwe bigaragaza ko abo aburanira bari bafite umutima wo kugira nabi igihe bashyiraga amafoto ya Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha mu gatabo basohoye bategura umunsi mukuru wo gutaha impamyabumenyi ya Nkurunziza Apollinaire, ahubwo bashakaga kugaragaza ubuzima yanyuzemo, imibanire myiza yagiranye n'imiryango imwe n'itari myiza yagiranye n'abantu bamwe barimo Hakizimana Sylvain.

[12] Nkurunziza nawe avuga ko Hakizimana atarashyingirwa yari nk'umwana mu rugo, ndetse ko aribo bamushyingiye, bityo ko nta mpamvu yo kumuharabika bari bafite, umucamanza akaba yaragombaga kureba *contexte* amagambo yakoreshejwemo, niba koko asebanya n' ingaruka yagize.

[13] Avuga kandi ko ijambo "irreconnaissance" ryanditse ku ifoto ya Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha rivuga "ukutibuka ineza wagiriwe", naho amagambo "mauvais compagnie" ari ku mutwe w'urupapuro ifoto ririho akaba asobanura "abababaniye nabi".

[14] Avuga kandi ko atari ikosa gushyira hanze ibibi umuntu yakoze hagamijwe kumufasha kwikosora, ndetse ko itegeko ritarengera abantu ku gaciro badafite cyangwa abafite "comportement immoral", imyitwarire mibi ivugwa hano akaba ari uko Hakizimana Sylvain wari nk'umwana wabo atibuka ineza yakorewe.

[15] Me Nsengiyumva avuga ko Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha batanze ibimenyetso byanditse bishingiye ku nyandiko Nkurunziza Apollinaire na Nzayinganyiki Elizabeth bateguye bagakwirakwiza mu bantu,ibyo bimenyetso bikaba bigaragaza ko bandagajwe bagateshwa agaciro n'icyubahiro, akaba rero asanga nta kosa umucamanza yakoze aha agaciro imiburanire yabo.

UKO URUKIKO RUBIBONA

[16] Gusebanya bisobanura kwitirira undi igikorwa gishobora gutesha uwo muntu icyubahiro cyangwa agaciro cyangwa gishobora kumusuzuguza mu ruhame. Bishobora gukurikiranwa mu manza z'inshinjabyaha hashingiwe ku ngingo za 288 na 289 z'itegeko rihana ibyaha rikoreshwa ubu, nk'uko bishobora gukurikiranwa mu manza z'imbonezamubano hashingiwe ku ngingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano ivuga ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[17] Urukiko rusanga amagambo "les mauvais compagnies" na "l'irreconnaissance"nta kundi yakumvikana usibye ko abantu bayavugwaho bafite imyitwarire igayitse yo kutibuka ineza bagiriwe, ibyo Nkurunziza akaba yarabishimangiye muri uru rukiko avuga ko itegeko ritarengera abantu ku gaciro badafite cyangwa abafite imyitwarire mibi "comportement immoral".

[18] Urukiko rusanga kandi icyo Nkurunziza n'umugore we bari bagamije bagaragariza abatumire babo nta bindi bisobanuro batanze ko Hakizimana Sylvain na Twizeyimana

Kwitonda Emeritha ari inshuti mbi kandi ko batibuka ineza bagiriwe atari ukubafasha kwikosora nk'uko babiburanisha, ahubwo ari ukubatesha icyubahiro nk'uko byasobanuwe mu nkiko zabanje, akaba atari ngombwa gusuzuma niba ibyo bavuze ari ukuri cyangwa atari ukuri kuko nabo batasobanuye mu gatabo bahaye abatumire babo icyo bashingiyeho babivuga.

[19] Urukiko rusanga kandi ku munsi mukuru wo kwizihiza impamyabumenyi ya Nkurunziza Apollinaire, bitari ngombwa gushyira mu dutabo tugenewe abatumire ifoto ya Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha yanditseho ko babaye inshuti mbi, ndetse ko batibuka ineza bagiriwe, kuba byarashyizwemo bitari ngombwa bikaba bigaragaza ubushake bwo kubaha isura itari nziza muri abo batumirwe.

[20] Ku bijyanye n'ingaruka z'ikosa bakorewe, Urukiko rusanga kuba ifoto yabo yarashyizwe mu dutabo twanyanyagijwe mu batumirwe ba Nkurunziza Apollinaire na Nzayinganyiki Elizabeth, bakandikwa mu cyiciro cy'inshuti mbi kandi bakavugwaho ko ari abantu batibuka ineza bagiriwe byarabatesheje icyubahiro mu bantu kuko bagaragajwe nk'abantu barangwa n'ubuhemu.

2° Ku byerekeye indishyi

[21] Nkurunziza Apollinaire na Me Nyirabuheta bavuga ko indishyi za 1.000.000Frw zatanzwe mu Rukiko Rukuru ari ikirenga, ndetse ko bigaragaye ko hari ikosa Nkurunziza n'umugore we Nzayinganyiki Elizabeth bakoze bacibwa 1 Frw ry'umugenzo (symbolique) y'indishyi z'akababaro.

[22] Me Nsengiyumva mu bujurire bwuririye ku bundi avuga ko ahubwo indishyi Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha bagenewe ari nke harebwe ukuntu bandagajwe bateshwa agaciro n'icyubahiro, akaba asaba ko bagenerwa amafaranga bari basabye ku rwego rwa mbere angana na 40.000.000Frw kuri bombi.

[23] Arasaba kandi ko abo aburanira bagenerwa 1.000.000Frw y'ikurikirana rubanza n'igihembo cy'avoka mu Rukiko Rukuru no mu Rukiko rw'ikirenga, yiyongera kuri 500.000Frw bagenewe mu Rukiko Rwisumbye, yose hamwe akaba 1.500.000Frw.

UKO URUKIKO RUBIBONA

[24] Urukiko rusanga mu kugena indishyi z'akababaro, hagomba kwitabwa ku kuba udutabo Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha bavuzwemo twaranyanyagijwe mu bantu batandukanye, Nkurunziza Apollinaire n'umugore we Nzayinganyiki Elizabeth bakaba batarigeze bagerageza kutugaruza mu bantu baduhaye cyangwa basaba imbabazi ku mugaragaro abo batesheje agaciro ngo bibe byahanagura mu bantu isura mbi babahesheje.

[25] Hashingiwe ku bimaze kuvugwa, Urukiko rusanga hakwiye kugumaho indishyi z'akababaro za 2.000.000Frw Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha bari bagenewe n'Urukiko Rwisumbuye rwa Musanze, umwe wese agahabwa 1.000.000Frw, cyane cyane ko Urukiko Rukuru rutagaragaje icyo rwashingiyeho rugabanya izo ndishyi, 40.000.000Frw basaba nayo akaba ari ikirenga ugereranyije n'ingaruka ikosa ryabagizeho.

[26] Ku bijyanye n'amafaranga y'ikurikirana rubanza n'igihembo cy'avoka mu Rukiko Rukuru no kuri uru rwego, Urukiko rusanga Hakizimana Sylvain na Twizeyimana Kwitonda

Emeritha bakwiye kuyahabwa kuko bagombye gufata avoka ubaburanira, bagira n'ibyo batakaza bijyanye no gukurikirana urubanza no kwitaba urukiko, ariko akagenwa n'urukiko mu bushishozi bwarwo, bakaba rero hakurikijwe imiterere y'urubanza rwabo bagenewe 600.000Frw (300.000Frw x 2), yiyongera ku mafaranga 500.000Frw bagenewe ku rwego rwa mbere.

III. ICYEMEZO CY'URUKIKO

[27] Rwemejeko ubujurire bwa Nkurunziza Apollinaire na Nzayinganyiki Elizabeth nta shingiro bufite.

[28] Rwemejeko ubujurire bwuririye ku bundi bwa Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha bufite ishingiro kuri bimwe.

[29] Rutegetse Nkurunziza Apollinaire na Nzayinganyiki Elizabeth bafatanyije guha Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha indishyi z'akababaro za 1.000.000Frw kuri buri wese, yose hamwe akaba 2.000.000Frw.

[30] Rutegetse kandi Nkurunziza Apollinaire na Nzayinganyiki Elizabeth bafatanyije guha Hakizimana Sylvain na Twizeyimana Kwitonda Emeritha 1.100.000Frw y'ikurikiranarubanza n'igihembo cy'avoka agizwe na 500.000Frw yo ku rwego rwa mbere, 300.000Frw mu Rukiko Rukuru na 300.000Frw kuri uru rwego.

[31] Rutegetse Nkurunziza Apollinaire na Nzayinganyiki Elizabeth bafatanyije gutanga amagarama y'urubanza angana na 24.550Frw.