UBUSHINJACYAHA v. MUNYAZOGEYE

[Rwanda URUKIKO RW'IKIRENGA – RPA0036/10/CS (Nyirinkwaya, P.J., Hatangimbabazi na Hitiyaremye, J.) 28 Werurwe 2014]

Amategeko mpanabyaha – Ubuhotozi – Ubuhamya butanzwe n'umuntu usamba –Ntibwafatwa nk'ibimenyetso bikomeye, bisobanuye kandi bihuje mu gihe butunganiwe n'ibindi bimenyetso – Itegeko n^{o}15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo,ingingo ya 108

Incamake y'ikibazo: Munyazogeye Alias Kiyonga na Kanyabugoyibaketsweho icyaha cyo guhotora Habarurema Theophile hashingiwe ku mvugo y'abatangabuhamya bageze aho icyaha cyabereye nyakwigendera agihumeka akavuga ko yishwe na Kiyonga na Adrien.Icyo cyaha baragihakanye mu Bugenzacyaha, mu Bushinjacyaha no mu nkiko.Urubanza rwatangiriye mu Rukiko rwa Mbere rw'Iremezo rwa Ruhengeri ariko nyuma y'ivugurura rwimurirwa mu Rukiko Rukuru,Urugereko rwa Musanze maze rwemeza ko Kanyabugoyi Adrien adahamwa n'icyaha naho Munyanzogeye Felicien ahamwa n'icyaha rumuhanisha igifungo cya burundu n'indishyi zingana na 1.500.000 Frw rushingiye ku batangabuhamya, iperereza ryemeje ko ntabandi bafite ayo mazina aho batuye no kuba uregwa na nyakwigendera bari biriwe mu gasantere kamwe, akicwa atashye. Munyazogeye yajuriye Urukiko rw'Ikirenga avuga ko yahamijwe icyaha atakoze mu gihe uushinjacyaha bwo buvuga ibimenyetso bashikirije Urukiko bihagije..

Incamake y'icyemezo: 1. Imvugo z'abatangabuhamya zivuga ko Habarurema yasambaga avuga ko yishwe na Kiyonga na Adrien ntizashingirwaho zonyine mu kwemeza ko Kiyonga wavugwaga ari Munyazogeye mu gihe amaperereza yakozwe atagaragaza icyo yaba yaramuhoye n' aho baba barahuriye.

2. Ku bijyanye n'uburyo iperereza ryakozwe, Urukiko rusanga Ubushinjacyaha usibye gufata Munyazogeye no kumukurikirana bukeka ko ari we Kiyonga wavugwaga na Habarurema ubwo yarimo gusamba, butagaragaza aho Habarurema yagiye avuye iwabo, ibikorwa yakoze, abantu bamubonye cyangwa abo baba baririrwanye, niba hari n'amafaranga abamuhotoye bamwambuye

3. Urukiko Rukuru rwahamije icyaha Munyazogeye rudashingiye ku bimenyetso bikomeye, bisobanuye kandi bihuje bityo akaba agomba guhanagurwaho icyaha.

Ubujurire bufite ishingiro.
Urubanza rwajuririwe ruhindutse kuri byose,uwajuriye agizwe umwere.
Uwajuriye agomba guhita arekurwa urubanza rukimara gusomwa
Amagarama aherereye ku isanduku ya Leta.
.

Amategeko yashingiweho:
Itegeko n^{o}15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 108.

Nta byemezo by'inkiko byifashishijwe,

URUBANZA.

I.IMITERERE Y'URUBANZA

[1] Mu gitondo cyo kuwa 26/09/2003 mu ma saa kumi n'ebyiri za mugitondo, ahitwa mu Gicankoni mu mugezi ugabanya uturere dutatu, Nyarutovu, Bukonya na Bugaragara, abagenzi bihitiraga babonye umusore ari gusamba, iruhande rwe hari irangamuntu ye iciwemo kabiri hamwe na karavati izingazinzemo ibipfundo ariko yacitsemo kabiri, basomye irangamuntu ye basanga yitwa Habarurema Théophile, atuye mu Karere ka Nyarutovu, Umurenge wa Bwishya.

[2] Abo bagenzi babonye Habarurema Théophile ataravamo umwuka ni abitwa Mukamuganga Libérata, Nyirababirigi Consolata na Kabengera Jean Damascène. Bavuga ko bamubajije abamuhotoye, abasubiza ko ari Diriyani na Kiyonga n'abandi benshi bamubaze. Bavuga kandi ko yasaga nk'uwaraye muri icyo gishanga kuko yari ariho urumeza.

[3] Munyazogeye Félicien *alias* Kiyonga na Kanyabugoyi Adrien nibo baketswe ko bavugwaga na Habarurema Théophile ari gusamba kuko aribo bari bazwi kuri ayo mazina ya Kiyonga na Adrien, ariko bo mu mabazwa yabo mu Bugenzacyaha no mu Bushinjacyaha, ndetse no mu rukiko bahakanye icyo cyaha bavuga ko ataribo bitwa gutyo bonyine, ndetse ko uwishwe batari banamuzi, Adrien we akanongeraho ko yapfuye yaragiye i Kigali gupagasa.

[4] Urubanza rwatangiriye mu Rukiko rwa Mbere rw'Iremezo rwa Ruhengeri, nyuma y'ivugururwa ry'inzego z'ubucamanza rujyanwa mu Rukiko Rukuru, Urugereko rwa Musanze, ruca urubanza kuwa 29/10/2009, rwemeza ko icyaha cy'ubuhotozi gihama Munyazogeye Félicien ariko ko kidahama Kanyabugoyi Adrien, ruhanisha Munyazogeye Felicien igifungo cya burundu, rumutegeka no guha uwari waregeye indishyi Kampayana Daphrose, nyina wa Habarurema Theophile, indishyi zingana na 1.500.000 Frw.

[5] Impamvu ya mbere urwo rukiko rwashingiyeho ruhamya icyaha Munyazogeye Félicien ni uko Habarurema Théophile yasambye avuga ko mu bamwishe harimo Kiyonga nk'uko byemejwe n'abatangabuhamya babyumvise, iperereza ryakorewe aho batuye rikaba ryaragaragaje ko nta wundi utuye muri ako gace witwa gutyo utari Munyazogeye. Ikindi urukiko rwashingiyeho ni uko Munyazogeye Félicien na Habarurema Théophile bari biriwe mu gasantere ka Busengo, hanyuma Habarurema Théophile akaza kwicwa ataha iwe i Bwishya, aho yiciwe hakaba hari urugendo rw'iminota 30 uvuye kuri ako gasantere umuntu agenda n'amaguru, urwo rugendo rukaba rutabuza ufite umugambi we kuwusohoza.

[6] Munyazogeye Félicien yajuririye Urukiko rw'Ikirenga avuga ko yahamijwe icyaha atakoze. Urubanza rwaburanishijwe mu ruhame kuwa 24/02/2014, Munyazogeye yunganiwe na Me Muhisoni Stella Matutina, Ubushinjacyaha buhagarariwe na Mutayoba Alphonse, Umushinjacyaha ku rwego rw'igihugu, naho Mukampayana Daphrose uregera indishyi yunganiwe na Me Karega Blaise Pascal.

II. ISESENGURA RY'IKIBAZO KIGIZE URU RUBANZA:

Kumenya niba hari ibimenyetso bidashidikanywaho bihamya Munyazogeye Félicien icyaha cy'ubuhotozi

[7] Munyazogeye Félicien avuga ko Urukiko Rukuru rwamuhamije icyaha ruvuga ko we na Habarurema Théophile bari biriranywe ku gasantere kamwe, nyamara ataribyo kuko hari udusantere tubiri, akitwa Busengo n'akitwa Rwungo, we akaba yari yiriwe Busengo, naho Habarurema Théophile yiriwe Rwungo.

[8] Asobanura ko Urukiko Rukuru rwakoreye iperereza aho ritagombaga gukorerwa kuko ryakorewe aho uwishwe atuye, aho guhera aho icyaha cyakorewe n'aho uwishwe yiriwe mu Rwungo, cyane ko umuryango we wavugaga ko yavuye mu rugo agiye kugura inka ariko umuranga w'inka akaba atarabajijwe.

[9] Avuga kandi ko ibyo Urukiko Rukuru ruvuga ko nta wundi muntu utuye muri ako gace witwa Kiyonga atabihamya kuko yumvise ko hari undi muntu witwa gutyo utuye hafi yaho uwishwe yaguye.

[10] Munyazogeye Félicien avuga ko ikindi anenga Urukiko Rukuru ari uko rwamuhamije icyaha rushingiye ku mvugo zivuguruzanya kuko abatangabuhamya bamwe bavuze ko uwishwe yasambaga avuga ko azize Kiyonga, abandi bakavuga ko yavugaga ko azize Adrien.

[11] Yongeraho ko Urukiko Rukuru rwirengagije ibimenyetso bimushinjura birimo imvugo za Ntamukunzi Viateur bita Rutanga, Mukantwari Dansila, Mukeshimana na Mukaruhamya, ibaruwa yo kuwa 18/07/2004 yanditswe n'Umuhuzabikorwa w'Akagali ka Mwumba yerekana aho yiriwe, ndetse n'ibaruwa yo kuwa 22/04/2005 yanditswe n'abantu 11 bo mu muryango we bavuga ko bakoze iperereza bagasanga ntaho ahuriye n'icyo cyaha.

[12] Me Muhisoni umwunganira avuga ko umutangabuhamya itegeko ryemera ari uwabonye ibintu biba, mu gihe abo Ubushinjyacyaha bufite nta n'umwe wabonye icyaha gikorwa, ahubwo bose bavuga ko ari ibyo babwiwe na nyakwigendera.

[13] Avuga kandi ko imvugo z'abatangabuhamya Urukiko Rukuru rwashingiyeho zitera gushidikanya ku byo bumvise kuko hari aho bavuga ko nyakwigendera yavugaga ko abamwishe bamubaze, nyamara barebye ku mubiri we bagasanga nta gisebe afite.

[14] Akomeza avuga ko no muri dosiye y'Ubushinjacyaha harimo byinshi bidasobanutse, nk'aho abatangabuhamya bemeza ko nyakwigendera yishwe anigishijwe karavati, ariko Muganga muri raporo ye akavuga ko atabona icyamwishe.

[15] Uhagarariye Ubushinjacyaha avuga ko kuba urukiko rwarashingiye ku buhamya bwa bariya batangabuhamya babonye Habarurema asamba, rukanibariza n'abandi mu iperereza rwakoze bihuye n'ibivugwa mu ngingo ya 119 y'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko mu manza z'inshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ndetse ko urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa.

[16] Avuga kandi ko ababonye Habarurema akirimo umwuka bavuze ibyo bumvise kandi babihagazeho, ndetse ko ubuhamya bwabo buhura n'ubwa Safari Théogène na Tugirabategetsi Vestine babajijwe mu Rukiko Rukuru kuko bavuze ko muri ako gace nta wundi muntu witwa Kiyonga uretse Munyazogeye.

[17] Ku bijyanye n'aho iperereza ryakorewe, Ubushinjacyaha buvuga ko ryakorewe aho nyakwigendera yaguye mu ihuriro ry'imirenge Bwishya/Busengo/Bugaragara, hafi y'agasantere ka Busengo aho bari bagorobereje.

[18] Naho ku bijyanye n'amabaruwa amushinjura, uhagarariye Ubushinjacyaha avuga ko abo mu muryango wa Munyazogeye bakoze uko bashoboye bifashishije n'abaturanyi ngo umuntu wabo abe umwere, ariko ko inyandiko zabo nta gaciro zigomba guhabwa kuko uretse n'uko batashinja umuvandimwe wabo, nta n'ububasha bafite bwo gukora iperereza kuko atari abagenzacyaha.

[19] Me Karega wunganira ureger a indishyi, avuga ko muri kopi y'urubanza rujuririrwa bigaragara neza ko iperereza ryakozwe bagasanga nta wundi witwa Kiyonga utuye muri ako gace uretse Munyazogeye. Avuga ko n'ubuyobozi bw'umurenge bwabisobanuye muri raporo yabwo yo kuwa 26/09/2003 ko nta wundi Kiyonga uba aho uretse Munyazogeye. Arangiza asaba ko uwo yunganira yahabwa indishyi zingana na 1.500.000 yari yagenewe mu rwego rwa mbere.

Uko urukiko rubibona:

[20] Urukiko Rukuru rwahamije icyaha Munyazogeye Félicien rushingiye ku kuba ababonye Habarurema Théophile atarapfa bemeza ko yababwiye ko yahotowe na Kiyonga, Adrien n'abandi benshi; ku kuba hari abatangabuhamya bemeje ko nta wundi utuye mu gace nyakwigendera yiciwemo witwa Kiyonga uretse Munyazogeye; ndetse no ku kuba Munyazogeye na Habarurema Théophile bari biriranywe mu gasantere ka Busengo, aho uyu yiciwe akaba ari hafi yaho kuko kugerayo n'amaguru ari iminota 30 gusa.

[21] Urukiko rusanga ariko Urukiko Rukuru rutagaragaza aho rwavanye ko Habarurema Théophile na Munyazogeye bari biriranywe mu gasantere ka Busengo kuko urebye imvugo z'abantu bose babajijwe n'inyandiko zitandukanye zigize dosiye, ntaho bigaragara ko biriranywe, ndetse nta n'umuntu wemeje ko nyakwigendera yageze kuri ako gasantere ka Busengo.

[22] Urukiko rusanga ahubwo ibyo Munyazogeye avuga ko Habarurema Théophile umunsi yicwa atigeze agera mu Gasantere ka Busengo aho we yiriwe byemezwa na Ntamukunzi Viateur alias Rutanga nyir'akabari yabanje kunyweramo kuko mu ibazwa rye mu Bugenzacyaha yemeje ko uwo munsi nta muntu utari uwa Busengo wahaje, kandi ko Munyazogeye yahiriwe akora radiyo, ndetse asangira inzoga n'abasirikare, nyuma agataha saa kumi n'ebyiri n'igice, isaha yatahiyeho ikaba yaranemejwe n'umugore we Mukaruhamya Léonille, mu buhamya yatangiye imbere y'Urukiko Rukuru igihe rwakoraga iperereza.

[23] Urukiko rusanga no kuba aho Habarurema Théophile yiciwe ari ahantu umuntu uri ku maguru yagenda iminota 30 gusa uvuye mu gasantere ka Busengo bidasobanura ko Munyazogeye yagezeyo mu gihe nta muntu n'umwe wemeza ko yamubonye yerekezayo.

[24] Urukiko rusanga nanone imvugo z'abatangabuhamya bavuga ko Habarurema yasambaga avuga ko yishwe na Kiyonga na Adrien zitashingirwaho zonyine mu kwemeza ko Kiyonga wavugwaga ari Munyazogeye mu gihe amaperereza yakozwe atagaragaza icyo yaba yaramuhoye n' aho baba barahuriye.

[25] Ku bijyanye n'uburyo iperereza ryakozwe, Urukiko rusanga Ubushinjacyaha usibye gufata Munyazogeye no kumukurikirana bukeka ko ari we Kiyonga wavugwaga na Habarurema ubwo yarimo gusamba, butagaragaza aho Habarurema yagiye avuye iwabo, ibikorwa yakoze, abantu bamubonye cyangwa abo baba baririrwanye, niba hari n'amafaranga abamuhotoye bamwambuye.

[26] Urukiko rushingiye ku byasobanuwe haruguru, rusanga Urukiko Rukuru rwarahamije icyaha Munyazogeye rudashingiye ku bimenyetso bikomeye, bisobanuye kandi bihuje (des présomptions humaines graves, précises et concordantes) nk'uko bivugwa mu ingingo ya 108 y'itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, bityo akaba agomba guhanagurwaho icyaha.

III. ICYEMEZO CY'URUKIKO:

[27] Rwemeje ko ubujurire bwa Munyazogeye Félicien bufite ishingiro.

[28] Rukijije ko urubanza rwajuririwe ruhindutse kuri byose, Munyazogeye Félicien akaba agizwe umwere ku cyaha akurikiranyweho.

[29] Rutegetse ko Munyazogeye Félicien arekurwa uru rubanza rukimara gusomwa.

[30] Ruvuze ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.