UBUSHINJACYAHA v. MUNYAMBIBI

[Rwanda URUKIKO RW'IKIRENGA – RPA 0062/ 10CS (Mutashya, P.J., Kanyange na Hitiyaremye, J.) 16 Gicurasi 2014]

Amategeko mpanabyaha – Ubwicanyi – Ntyaryozwa icyaha yakoze kuko yagikoze arwaye ibisazi – Itegeko-teka nº 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda,ingingo ya 70.

Amategeko mpanabyaha – Gusubizwa mu muryango – Igihe uwakoze icyaha afite uburwayi bwo mu mutwe asubirizwa mu muryango bigenwa n'ikigo yoherejwemo ngo akurikiranwe.

Incamake y'ikibazo: Munyambibi Gilbert yahamijwe icyaha cy'ubwicanyi n'Urukiko Rukuru, Urugereko rwa Nyanza aho yirikankanye umukecuru witwa Nyiramajyambere Adeline amucitse ahura n'undi wigenderaga witwa Kambibi Alivera amukubita igiti mu mutwe aramwica. Urukiko rwamuhanishije igihano cy'igifungo cy'imyaka 20. rushingiye ku kubakuba uwaregwaga ubwe yariyemereye icyaha inshuro nyinshi ndtse no ku mvugo z'abatangabuhamya. Yajuririye mu Rukiko rw'Ikirenga avuga ko nta bushake yigeze agira bwo gukora icyaha kuko ngo yagikoze afite uburwayi bwo mu mutwe.

Ubushinjacyaha bwo bwavuze ko kuba Munyambibi Gilbert avuga ko yakoze icyaha kubera uburwayi bwo mu mutwe agomba kubanza kugagariza Urukiko ko yabikoze mbere yo gukora iki cyaha kandi akaba ari muganga wenyine wabyemeza.

Incamake y'icyemezo: 1. Umuganga w'indwara zo mu mutwe yemeje ko nyuma gato yo gukora icyaha Munyambibi yari afite imitekerereze ndetse n'imikorere bidasanzwe bityo akaba yari afite uburwayi bwo mu mutwe. Bishimangirwa n'uko yishe nyakwigendera bahuye arimo kwirukankana undi nawe yari agiye kwica akamucika akaba nta n'umwe muribo bari baziranye ngo bigaragare ko haba hari icyo bapfaga. Bityo rero akaba nta buryozwacyaha uwajuriye yagira kuko yakoze icyaha afite uburwayi bwo mu mutwe.

2. Ku bijyanye no gusubiza mu muryango Urukiko rwemje ko impamvu zatumye akora icyaha zigihari bityo akaba agomba gushyikirizwa ibitaro by'indwara zo mu mutwe kugirano akurikiranwe bikaba ari nabyo bigomba kugena igihe cyo gusubizwa mu muryango.

Ubujurire bufite ishingiro.
Nta buryozwacyaha uwajuriye afite.
Urubanza rwaciwe n'Urukiko Rukuru ruhindutse kuri byose.
Uwajuriye agomba kurekurwa agashyikirizwa ibitaro byo mu mutwe agakurikiranwa.
Amagarama y'urubanza aherereye ku isanduku ya Leta

Amategeko yashingiweho

Itegeko-teka nº 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda,ingingo ya 70.

Nta manza zifashishijwe

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Ku itariki ya 1/12/2008, uwitwa MUNYANDINDA Télesphore yatanze ikirego mu bugenzacyaha arega MUNYAMBIBIGilbert ko kuri uwo munsi yishe umubyeyi we witwa KAMBIBI Alvéra ubwo yari mu mudugudu wa Makarabage, Akagari ka Bugari, Umurenge wa Ntyazo, Akarere ka Nyanza, Intara y'Amajyepfo, mu ma saa tatu za mu gitondo.Ibyo kandi byemejwen'umukecuru witwa NYIRAMAJYAMBERE Adeline wavuze ko KAMBIBI yabaye igitambo cye kuko ari we bahuye mbere akamwirukankana n'igiti ashaka kumwica, ubwo uyu yamuhungaga agahingukira kuri KAMBIBIakamukubita igiti yari afite mu mutwe akamwica.

[2] Nyuma y'iperereza Ubushinjacyaha bwareze MUNYAMBIBI Gilbert mu Rukiko Rukuru, Urugereko rwa Nyanza, rwemeza ko ahamwa n'icyaha cy'ubwicanyi rumukatira igifungo cy'imyaka makumyabiri (20). Mu gufata icyo cyemezo, Urukiko rwashingiye ku kuba uregwa ubwe yariyemereye icyaha inshuro nyinshi kandi bimuturutseho, ndetse no ku mvugo z'abatangabuhamya.

[3] MUNYAMBIBI Gilbert yajuriye mu Rukiko rw'Ikirenga avuga ko n'ubwo yemera icyaha, ariko nta bushake bwo kugikora yari afite kuko ngo agikora yari afite uburwayi bwo mu mutwe.

[4] Urubanza rwaburanishijwe ku itariki ya 25/11/2013 MUNYAMBIBI Gilbert yunganiwe na Me KAMOTA Amédé, Ubushinjacyaha buhagarariwe na NTAWANGUNDI Béatrice, Umushinjacyaha ku Rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO.

Gusuzuma niba MUNYAMBIBI Gilbert yari afite uburwayi bwo mu mutwe ubwo yakoraga icyaha.

[5] MUNYAMBIBI Gilbert yatangiye asaba imbabazi z'icyaha cy'ubwicanyi akurikiranweho, ariko avuga ko ubwo yakoraga icyaha yari yarataye ubwenge, ibi ngo bikaba bigaragazwa n'uko aho amariye kugera muri gereza ubuyobozi bwagiye kumuvuza muri CARAES ishami rya HUYE, ndetse ngo n'abaturage baturanye bari bazi ko yari asanganywe ubwo burwayi bwo mu mutwe.

[6] Me KAMOTA Amédé umwunganira na we avuga ko uwo yunganira atari ameze neza mu mutwe ubwo yakoraga icyaha, kuko kuri uwo munsi yashatse kwica n'undi mukecuru witwa NYIRAMAJYAMBERE Adeline, yamubura akica KAMBIBI Alvéra bari bahuye yigendera, abo bombi akaba nta n'umwe bari baziranye. Akomeza avuga ko ibimenyetso by'uko uwo yunganira atari ameze neza mu mutwe byashakirwa mu buyobozi bwa gereza no kuri CARAES ishami rya HUYE kuko akigera muri gereza yahise ajya kwivuza. Yongeraho ko kugira ngo batange ibyo bimenyetso basabye icyemezo cy'urukiko, umucamanza wa mbere ntiyagitanga. Arangiza avuga ko bigaragaye ko uwo yunganira yakoze icyaha arwaye mu mutwe hakurikizwa ingingo ya 70 y'igitabo cy'amategeko ahana ibyaha mu Rwanda cya cyera ivuga ko hatabaho uburyozwe bw'icyaha mu gihe uwagikoze nta bwenge yari afite. Mu gihe urukiko rwabibona ukundi, hagashingirwa ku ngingo ya 35 y'itegeko

ry'imiburanishirize y'imanza z'inshinjabyaha n'iya 83 y'igitabo cy'amategeko ahana ibyaha mu Rwanda akagabanyirizwa igihano.

[7] Uhagarariye Ubushinjacyaha avuga ko kuba MUNYAMBIBI Gilbert yemera icyaha, ariko akavuga ko yari afite uburwayi bwo mu mutwe, agomba kugaragariza urukiko ko ubwo yari abufite mbere yo gukora icyaha, bityo koko akaba atahanwa hashingiwe ku ngingo ya 70 y'igitabo cy'amategeko ahana ibyaha mu Rwanda. Ibyo ngo bikaba byakwemezwa na muganga gusa. Ibi bikaba bitandukanye n'ibivugwa n'umwunganira ko kuba yarakoze icyaha agahita ajyanwa kwa muganga ari ikimenyetso cy'uko yari arwaye, kuko ashobora kuba yarahindutse umusazi nyuma yo kwica umuntu.

[8] Ku birebana n'ibyavuzwe n'uwunganira MUNYAMBIBI Gilbert byo kumugabanyiriza igihano, uhagarariye Ubushinjacyaha avuga ko umucamanza waciye urubanza rujuririrwa yamugabanyirije kuko yavuze ko ubundi yagombaga guhanishwa igifungo cya burundu, ariko noneho akaba yaramuhanishije gufungwa imyaka makumyabiri (20) gusa.

[9] Nyuma yo kumva impamvu z'ubujurire bwa MUNYAMBIBI Gilbert avuga ko ubwo yakoraga icyaha yari afite uburwayi bwo mu mutwe, n'icyo Ubushinjacyaha bubivugaho, Urukiko rwafashe icyemezo cyo gusaba umuganga wasuzumye MUNYAMBIBI Gilbert impapuro zose yivurijeho,muganga cyangwa ubuyobozi bw'ibitaro yivurijeho bakagaragaza igihe yatangiriye kwivuza, ibimenyetso bigaragaza uko yari ameze muri rusange ubwo yagezwaga kwa muganga.

[10] Raporo yashyizweho umukono na Dr JMV SEBAJURI wo muri CARAES BUTARE ndetse akaza no kuyisobanurira urukiko ku itariki ya 14/4/2014 yerekana ko MUNYAMBIBI Gilbert yasuzumwe bwa mbere ku itariki ya 23/2/2009 afite imyitwarire idasanzwe (disorganized behavour) no kuba yari afite ikibazo cyo kudasinzira amaranye imyaka ibiri (2). Iyo raporo ikomeza ivuga ko yagarutse kwisuzumisha azanye n'abarwaza (caregivers) ku itariki ya 7/5/2009 avuga ko afite ikibazo cyo kudasinzira, kwigunga (social withdrawal), kugaragara nk'uwataye ubwenge (psychomotor inhibition), kubona cyangwa kumva ibintu bidasanzwe (hallucinations) no kwisekesha ubusa (unmotivated laughes). Irangiza ivuga ko MUNYAMBIBI kuri uwo munsi yasaga n'ujunjamye ariko ibyo avuga ugasanga bifite injyana kandi ashobora kuvuga ibikorwa bye byose bya buri munsi (the mood was depressive but he was coherent and able to carry out daily activities). Ngo kuva yakwisuzumisha bwa mbere akaba yarakomeje gufata imiti.

UKO URUKIKO RUBIBONA

[11] Inyandiko ziri muri dosiye zirerekana ko ku itariki ya 1/12/2008 MUNYAMBIBI Gilbert yirukankanye umukecuru witwa NYIRAMAJYAMBERE Adeline wemeza ko bataziranye ashaka kumwica, amucitse yica KAMBIBI Alvéra na we atazi bari bahuye. Bikaba bigaragara ko ntacyo yamuhoye kuko batari banaziranye nk'uko naMUNYANDINDA Télesphore, umuhungu wa nyakwigendera, ari na we watanze ikirego yemeza ko atari azi MUNYAMBIBI Gilbert.

[12] Ingingo ya 70, igika cya mbere, y'itegeko-teka Frishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda ryakoreshwaga ubwo icyaha cyakorwaga, ivuga ko nta buryozwacyaha bubaho ku muntu ukurikiranweho icyaha wari urwaye ibisazi mu gihe

yakoraga icyaha cyangwa igihe akoze icyaha abitewe n'agahato atashoboraga kwikura cyangwa iyo igikorwa cyateganyijwe n'itegeko kandi kigategekwa n'ubutegetsi.

[13] Ku birebana n'uru rubanza, kuba ku itariki ya 1/12/2008 MUNYAMBIBI Gilbert yarishe KAMBIBI Alvéra afite uburwayi bwo mu mutwe nk'uko byemezwa na muganga wamusuzumye hashize igihe gito akoze icyaha akurikiranweho, ibi bigashimangirwa n'uko yishe uyu mukecuru bahuye yari ari kwirukankana undi mukecuru witwa Nyiramajyambere Adeline na we yashakaga kwica, aba bombi akaba nta n'umwe bari baziranye ngo bibe byagaragara ko hari icyo bapfaga,Urukiko rurasanga nta buryozwacyaha Munyambibi Gilbert afite ku bwicanyi bwakorewe KAMBIBI Alvéra kuko yabukoze afite uburwayi bwo mu mutwe nk'uko byasobanuwe.

[14] Nyamara ariko kubera ko impamvu zatumye MUNYAMBIBI Gilbert yica umuntu zigihari nk'uko urukiko rwabisobanuriwe n'umuganga ubwo yari imbere yarwoku itariki ya 14/4/2014, Urukiko rurasanga agomba gushyikirizwa ibitaro by'indwara zo mu mutwe agakomeza gukurikiranwa, akaba ari na byo bizagena igihe azasubirira mu muryango.

III. ICYEMEZO CY'URUKIKO.

[15] **Rwemeje**koubujurire bwa MUNYAMBIBI Gilbert bufite ishingiro,

[16] **Rwemeje**ko nta buryozwacyaha afite ku cyahacy'ubwicanyi yakoze;

[17] **Ruvuze**ko urubanza n° RPA 0002/09/HC/NYA rwaciwe n'Urukiko Rukuru, urugereko rwa Nyanza, ku wa 28/1/2010 ruhindutsekuri byose;

[18] **Rutegetse** ko MUNYAMBIBI Gilbert ahita arekurwa urubanza rukimara gusomwa agashyikirizwa ibitaro by'indwara zo mu mutwe (Hôpital Neuro-Psychiatrique CARAES NDERA, Antenne de Butare) kugira ngo bikomeze kumukurikirana;

[19] **Rutegetse** ko amagarama y'urubanza aherera ku isanduku ya Leta.