

## **UBUSHINJACYAHA v. MUTABAZI**

[Rwanda URUKIKO RW'IKIRENGA – RPAA 0227/ 10/CS (Mukanyundo, P.J., Gatete na Mukamulisa, J.) 11 Mata 2014]

*Amategeko mpnabyaha – Gusambanya umwana –Kugabanyirizwa igihano – Kwemera icyaha atincze ntibyamubuza kugabanyirizwa igihano; ahubwo kuba uregwari ubwa mbere akoze icyaha kandi akiri muto ni impamvu nyoroshyacyaha – Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 8 na 765 n'Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 82 na 83.*

**Inca make y'ikibazo:** Uwajuriye yahamijwe n'Urukiko Rwisumbuye rwa Nyarugemge icyaha cyo gusambanya umwana w'umukobwa ufite imyaka 4 y'amavuko. Rwanmuhanishije igifungo cy'imyaka 10 n'ihazabu y'amafaranga 100 000. Yajururiye Urukiko Rukuru avuga ko Urukiko rubanza rwamuhamije icyaha ruvuga ko yac yemeye kandi ntacyo yemeye kuko yasinyishijwe ku gahato mu Bushinjacyaha nyuma yo gukubitwa. Urukiko rwo rwasanze atari byo kuko kuba baramusanze hejuru y'umwana ari ikimenyetso gihagije kugirango byitwe iho hoterwa nk'uko amategeko abitegenya bityo akabanta raporo yamuganga yari ikenewe kugirango ahamwe n'icyaha. Yajururiye mu Rukiko rw'Ikirenga avuga ko nta raporo ya muganga igaragaza ko ico cyaha cyakozwe koko anavuga ko Urukiko rwashingiye ku buhamya bw'umutangabuhama bafite ibyo bapfa. Ku ikubitiro yabwiye Urukiko ko imyanzuro yashyikirije Urukiko atakiyishingiyeho ko ahubwo yemera icyaha akanagisabira imbabazi.

Ubushinjacyaha bwo buvuga ko noneho ushinja ye mera icyaha n'ubwo abikoze atinze. Bwunzemo ariko ko ibyo asaba yabihawe kuko yahanishijwe igifungo cy'imyaka 10 aho guhanishwa igifungo cya burundi.

**Inca make y'icyemezo:** Kuba uwajuriye yaremeye icyaha atinze ntibyamubuza kongera kugabanyirizwa ibihano. Ikindi kandi, kuba yaragikoze akiri muto ari n'ubwambere yari akoze icyaha, agomba guhabwa amahirwe yo gusubira mu buzima busanzwe kugira ngo yiybake

**Ubujurire bufite ishingiro.  
Uwajuriye ahanishijwe igifungo cy'imyaka 7  
Urubanza rwajuririwe ruhindutse ku bijyanye n'ibihano.**

### **Amategeko yashiniweho**

Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 8 na 765.

*Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 82 na 83.*

### **Nta manza zifashishijwe**

**Urubanza**

## I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Mutabazi Cléophas akurikiranyweho n'Ubushinjacyaha icyaha cyo gusambanya umwana w'umukobwa ufite imyaka ine (4) y'amavuko witwa Ishimwe Florence. Urwo Rukiko rwamuhamije icyaha, maze rumuhanisha igifungo cy'imyaka icumi (10) n'ihazabu ya r wf100.000 kubera ko yakoze icyaha ari umwana.

[2] Mutabazi yajuririye Urukiko Rukuru, avuga ko umucamanza wa mbere yamuhamije icyaha avuga ko yacyemeye kandi atarigeze acyemera, kubera ko yasinyishijwe ku ngufu mu Bugenzacyaha nyuma yo gukubitwa, Urukiko rwasannze ibyo yavugaga nta bimenyetso abitangira, ahubwo ko ibyo yasinyiyebihura n'invugo z'abatangabuhama babajijwe, bikaba bigaragaza ko yabivuze ku bushake bwe kuko yasobanuye uburyo icyaha cyakozwe. Urukiko rwasanze kuba baramusanze ari hejuru y'umwana ari ikimenyetso gihagije kugira ngo byitwe iho hoterwa nkuko biteganywa n'Itegeko, akaba atari ngombwa ko hifashishwa raporo ya muganga kugira ngo abone guhamwa n'icyaha. Urukiko kandi ntirwahaye agaciro amakimbirane avuga ko yari afitanye na nyina w'umwana, kubera ko nta bimenyetso yabitangiye, ku bw'izo mpamvu, rugumishaho icyemezo cy'Urukiko Rwisumbuye.

[3] Mutabazi yajuririye Urukiko rw'Ikirenga avuga ko Umucamanza yirengagije ingingo yatanze, amukatira igifungo nta na raporo ya muganga ihari yemeza ko icyaha cyakozwe; anavuga kandi ko Urukiko rwashingyiye ku mvugo y'umutangabuhama bafite ibyo bapfa.

[4] Iburanisha ry'urubanza ryabaye kuwa 10/03/2014, Mutabazi yunganiwe na Me Abijuru Emmanuel, naho Ubushinjacyaha buhagarariwe na Higaniro Hermogène, Umushinjacyaha ku rwego rw'Ighugu. Ku ikubitiro, Mutabazi yavuze ko atesheje agaciro imyazuro yari yashyikirije Urukiko, ko noneho yemera icyaha ku buryo busesuyeakanagisabira imbabazi.

## II. ISEENGURA RY'IKIBAZO KIRI MU RUBANZA.

**Ikibazo cyo kumenya niba Mutabazi yemera icyaha akaba yagabanyirizwa ibihano.**

[5] Mutabazi avuga ko, nyuma y'igihe amaze muri Gereza namasomo yagiye ahabwa, ahagaze imbere y'urukiko yemera icyaha mbere yahakanaga akanagisabira imbabazi.

[6] Asobanura ko ku itariki ya 25/09/2007, umwana witwa Ishimwe Florence yavuye ku ishuri aza mu rugo aho yakoraga aje kuvoma amazi, nuko ahita amujyana mu cyumba aramusambanya. Avuga ko uwitwa Umurerwa Sifa wavyuze mu buhamya bwe ko yasanze amuri hejuru, agahita ajya kubibwira nyina w'umwana, Mutabazi agashyikirizwa inzego za Polisi. Akomeza avuga ko mu Bugenzacyaha yemeye icyaha, ariko nyuma akagenda agihakana, ubu akaba acyemera akanagisabira imbabazi. Avuga kandi ko yasabye Se w'umwana imbabazi amusanze muri Gereza mu mwaka wa 2010 akazimuha, amugira inama ko azazisaba n'Urukiko, akaba ari byo yiyemeje gukora imbere yarwo. Asoza avuga ko ubu yigishijwe akagororwa, akaba asaba ko yasubira mu muryango nyarwanda kuko nta cyaha azongera gukora.

[7] Umwunganira avuga ko ubu noneho Mutabazi yemera icyaha akagisabira imbabazi, akaba afite ubushake bwo kutazongera gukora icyaha. Asobanura ko mu kumugenera ibihano, Urukiko rwazirikana ko ari ubwa mbere akurikiranywe n'inkiko, ko kandi yakoze icyaha akiri muto, rugashingira ku biteganywa n'ingingo ya 78 y'Itegeko Ngenga n° 01/2012

ryo kuwa 02/05/2012/OL rishyiraho Igitabo cy'amategeko ahana, ndetse no ku za 82 na 83 z'Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana zateganya impamvu nyoroshyacyaha, akagabanyirizwa igihano agahanishwa igifungo cy'imyaka itanu (5).

[8] Uhagarariye Ubushinjacyaha avuga ko noneho koko Mutabazi yemeye icyaha, ariko akaba acyemeye atinze, kandi ko ibyo ubu asaba yabyemerewe mu Rukiko Rwisumbuye kubera ko yahanishijwe igifungo cy'imyaka icumi (10) gusa aho guhanishwa igifungo cya burundu.

### **Uko Urukiko rubibona.**

[9] Urukiko rusanga nubwo Mutabazi yari yahakanye icyaha mu nzego zose, ubu noneho acyemera akagisabira imbabazi ku buryo budashidikanywaho, kuko avuga n'uburyo cyakozwe, akaba yaranasabye imbabazi umuryango w'umwana yahemukiye.

[10] Rusanga nubwo Mutabazi yemeye icyaha atinze, bitabuza ko agabanyirizwa ibihano, kuko yakoze icyo cyaha akiri muto kandi ari ubwa mbere akurikiranywe mu nkiko, agahabwa amahirwe yo gusubira mu buzima busanzwe hakiri kare kugira ngo yiyubake.

[11] Rurasanga rero, hashingiwe rero ku biteganya n'ingingo ya 82 n'iya 83 z'Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ziteganya impamvu nyoroshyacyaha, no ku ngingo ya 8 n'iya 765 z'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, Mutabazi akwiye kugabanyirizwa igihano cy'igifungo cy'imyaka cumi (10) yari yahawe, agahanishwa igifungo cy'imyaka irindwi (7).

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

[12] Rwemeje ko ubujurire bwa Mutabazi Cléophas bufite ishingiro;

[13] Rumuhanishiye igifungo cy'imyaka irindwi (7);

[14] Ruvuze ko imikirize y'urubanza rwajuririwe RPA 0587/09/HC/KIG ihindutse ku byerekeye ibihano.