UBUSHINJACYAHA v. NSENGIYUMVA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RPAA 0024/09/CS (Mutashya, P.J., Kanyange na Hitiyaremye, J.) 13 Ukuboza 2013]

Amategeko yerekeye imiburanishirize y'imanza z'inshinjabyaha – Kujuririra indishyi zikomoka ku cyaha – Iyo uregwa agizwe umwere, uregera indishyi akajurira, urubanza rwose rwongera kuburanishwa mu mizi – Itegeko-ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, Ingingo ya 164 – Itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 187.

Amategeko yerekeye imiburanishirize y'imanza z'inshinjabyaha – Ihamagarwa ry'Ubushinjacyaha mu manza zijuririra indishyi igihe ushinjwa yagizwe umwere ku rwego rwa mbere – Kujuririra indishyi zikomoka ku cyaha ntibivuga ko urubanza rw'inshinjacyaha ruta kamere yarwo rukaba urw'imbonezamubano. Bityo Ubushinjacyaha buba bugomba kwitaba bukagira icyo buvuga n'ubwo butabitegetswe – Itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 9 na 187 n'Itegeko-ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko mu ngingo yaryo ya 164.

Incamake y'ikibazo: Nabahire, Nyaguhirwa, Nsengiyumva na Munyaneza mu Rukiko Rwisumbuye rwa Ngoma bashinjwa ubuhemu bagamije gutwara amafaranga ya Bank y'Abaturage y'u Rwanda, Ishami rya Gahororo. Nsengiyumva na Nabahire bahamijwe gukora inyandiko mpimbano n'ubuhemu bahanishwa igifungo cy'imyaka 2 n'ihazabu ya 50.000Frw kubera gukora inyandiko mpimbano n'igifungo cy'amezi 6 ku cyaha cy'ubuhemu naho Nyaguhirwa na Munyaneza bahamwa no kuba ibyitso mu cyaha cy'ubuhemu gihama Nsengiyumva rubahanisha igifungo cy'amezi 6. Rwemeje kandi ko ubuhemu bwakozwe na Nsengiyumva na Nabahire Nyaguhirwana Munyaneza cyateje iyo banki igihombo kingana na 80.107.800Frw rubategeka kwishyura ayo mafaranga bafatanyije kandi rwemeza ko Nabahire agomba kwishyura igihombo kingana na 9.400.000Frw wenyine rwategetse abashinjwaga bose kandi kwishyura amafaranga y'ikurikiranarubanza.

Abaregwaga bose bajuririye mu Rukiko Rukuru, Urugereko rwa Rwamagana nuko rubahindura abere. Iyo banki yajuririye urubanza mu Rukiko rw'Ikirenga ivuga ko Urukiko rwirengagije ibimenyetso byose ndetse rurenga ku mvugo z'abashinjwa bemera kandi bagasobanura uburyo bakoramo ubwo uburiganya bwose.

Mbere y'itangira ry'urubanza, Ubushinjacyaha bwazamuye inzitizi buvuga ko bubona nta mpamvu yo guhamagarwa mu rubanza kuko butajuriye. Ahubwo hajuriye Banki y'Baturage y'u Rwanda ku bijyanye n'indishyi gusa. Bwasoje buvuga ko bwagombye gukurwa mu rubanza.

Incamake y'icyemezo: 1 Uwari ukurikiranyweho icyaha akagirwa umwere, ntibibuza uwangirijwe n'icyaha kujuririra indishyi kandi urwo rubanza rukongera kuburanishwa mu mizi uwajuriye agatanga ibimenyetso bihamya uregwa icyaha byaba bisanzwe muri dosiye cyangwa ibindi bishya. Icyo gihe, Urukiko rusuzuma niba uwangirijwe n'icyo cyaha ashobora kwishyurwa indishyi z'ibyangijwe n'icyaha uregwa yahanaguweho.

2. Nta rubanza rw'inshinjabyaha rushobora kuburanishwa ubushinjacyaha budahagarariwe. Bityo rero, kuba ushinjwa yaragizwe umwere uregera indishyi akazijuririra, ntibivuga ko urubanza rw'inshinjabyaha ruta kamere yarwo rukaba urw'imbonezamubano. Ahubwo

indishyi zisabwa, zirasabwa umucamanza w'imanza nshinjabyaha akazitanga mu bujurire ahereye ku bimenyetso yashyikirijwe n'uwajuririye indishyi amaze kubisuzuma akabiha agaciro.

Inzitizi nta shingiro ifite.
Iburanisha rizakakomeza.
Amagarama y'urubanza arasubitwe.

Amategeko yashingiweho:
Itegeko-ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 164.
Itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 9, 12 n'iya 187.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
Henri-D. Bosly and Damien Vandermeersch in their book "Droit de la Procédure Pénale", la charte, 4ème édition, 2005.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwareze Nabahire, Nyaguhirwa, Nsengiyumva na Munyaneza mu Rukiko Rwisumbuye rwa Ngoma, bubakurikiranyeho kuba barakoze inyandiko mpimbano n'icyaha cy'ubuhemu bagamije gutwara amafaranga ya Banki y'Abaturage y'u Rwanda, ishami rya Gahororo, bifashishije uburyo bunyuranye bayakoresha ibyo atagenewe.

[2] Urukiko rwemeje ko Nsengiyumva na Nabahire bahamwa n'ibyaha byo gukora inyandiko mpimbano n'icy'ubuhemu, rubahanisha igifungo cy'imyaka ibiri (2) n'ihazabu ya 50.000 frw ku cyaha cyo gukora inyandiko mpimbano, n'igifungo cy'amezi atandatu (6) ku cyaha cy'ubuhemu naho Nyaguhirwa na Munyaneza bahamwa no kuba ibyitso mu cyaha cy'ubuhemu gihama Nsengiyumva, rubahanisha igifungo cy'amezi atandatu (6).

[3] Rwemeje kandi ko icyaha cy'ubuhemu cyakozwe na Nsengiyumva, Nabahire, Nyaguhirwa na Munyaneza cyateje Banki y'Abaturage y'u Rwanda, ishami rya Gahororo, igihombo kingana na 80.107.800Frw, rubategeka kwishyura ayo mafaranga bafatanyije, rwemeza ko Nabahire ku giti cye nawe yayiteje igihombo kingana na 9.400.000Frw, rumutegeka kuyariha. Rwategetse kandi Nsengiyumva, Nabahire, Nyaguhirwa na Munyaneza kuriha Banki y'Abaturage y'u Rwanda, ishami rya Gahororo 200.000Frw y'ikurikiranarubanza.

[4] Nabahire, Nyaguhirwa, Nsengiyumva na Munyaneza bajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, mu guca urubanza rwemeza ko ubujurire bwabo bufite ishingiro, ko bahanaguweho ibyaha baregwa.

[5] Banki y'Abaturage y'u Rwanda, ishami rya Gahororo yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko rwirengagije ibimenyetso byose ndetse rurenga no ku mvugo z'abashinjwa bemera kandi bagasobanura uburyo bakoragamo ayo manyanga yose, rubagira abere.

[6] Iburanisha ry'urubanza ryashyizwe ku wa 02/10/2013 ariko uwo munsi urubanza ntirwaburanishwa kubera ko Urukiko rwasanze mu baburanyi hari abatarahamagajwe mu buryo bukurikije amategeko, iburanisha ry'urubanza ryimurirwa ku wa 13/11/2013, kuri iyi tariki abaregwa bose baritaba Nyaguhirwa Naurat na Munyaneza Robert bunganiwe na Me Rumenge Nkundimana Victor, Me Gasasira Jean Claude yunganira Nsengiyumva Prosper, Me Habimana Adolphe yunganira

[7] Mbere y'uko urubanza ruburanishwa mu mizi, uhagarariye ubushinjacyaha yatanze inzitizi avuga ko abona nta mpamvu ihari yo kuba ubushinjacyaha buhamagarwa muri uru rubanza kubera ko bwo butajuriye, ko hajuriye Banki y'Abaturage y'u Rwanda ku bijyanye n'indishyi gusa, ko ubushinjacyaha bwagombye gukurwa mu rubanza.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba ubushinjacyaha bugomba guhamagarwa mu iburanisha ry'ubujurire bwatanzwe n'uregera indishyi mu gihe uregwa yahanaguweho icyaha ku rwego rwa mbere.

[8] Nkuko bikubiye mu mwanzuro yashyikirije urukiko akanabisobanura mu iburanisha ry'urubanza, uhagarariye Ubushinjacyaha avuga ko uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, abaruregwamo bahamwa n'ibyaha bwari bubakurikiranyeho. Ko nyuma yo kutishimira imikirize y'urubanza, abaregwa bajuririye mu Rukiko Rukuru, Urugereko rwa Rwamagana, rusanga badahamwa n'ibyaha bashinjwa kubera ko nta bimenyetso, icyo cyemezo nicyo Banki y'Abaturage y'u Rwanda yajuririye muri uru Rukiko, ubushinjacyaha ntibwajurira.

[9] Avuga ko ikiburanwa ubu, ari ikirebana n'indishyi gusa, n'ikimenyimenyi umucamanza w'ibanzirizasuzuma yakiriye ubujurire bwa Banki y'Abaturage y'u Rwanda ashingiye ko indishyi zaregewe zirengeje 20.000.000Frw. Akomeza avuga ko ingingo ya 175 n'iya 187 z'itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zisobanura neza ko uregera indishyi ajuririra urubanza rwaciwe, ku byerekeranye n'indishyi gusa, ko kandi urukiko rwajuririwe ruburanisha gusa mu mbibi z'icyajuririwe nkuko ingingo ya 189 y'iryo tegeko ibisobanura.

[10] Uhagarariye Ubushinjacyaha arongera akavuga ko ingingo ya 187 y'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kimwe n'ingingo ya 164 y'itegeko-ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, zose zihuriza ku kintu kimwe cy'uko iyo uregwa agizwe umwere, bitazitira uwaregeraga indishyi kujurira, izo ngingo zikanagena ko mu gihe ajuriye haburanishwa gusa ibijyanye n'indishyi.

[11] Avuga kandi ko ku bivugwa mu ngingo ya 187 y'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ko iyo uregera indishyi ajuriye urubanza rwose rwongera gusuzumwa mu mizi yarwo, asanga bishaka kuvuga kurusuzuma rwose ku birebana n'indishyi gusa, akaba asanga rero nta mpamvu yatuma ubushinjacyaha buhamagazwa muri bene izi manza, dore ko no mu ivugururwa ry'inzego

z'ubucamanza, ubushinjacyaha bwakuwe mu manza z'imbonezamubano kandi urubanza ruburanishwa ubu, rukaba rufite kamere y'urubanza mbonezamubano.

[12] Arangiza avuga ko ibimaze kuvugwa byagarutsweho n'abahanga mu mategeko nka Henri-D. Bosly na Damien Vandermeersch mu gitabo cyabo "Droit de la Procédure Pénale, la charte, 4ème édition, 2005, page 1419-1420", aho bavuga ko iyo uregera indishyi ajuriye, ajuririra urubanza rwaciwe ku byerekeranye n'indishyi gusas, kubera ko ibyerekeranye n'icyaha baregwa biba byararangije kuba itegeko kuko byafashweho icyemezo nticyajuririrwa.

[13] Me Ingabire Solange uburanira Banki y'Abaturage y'u Rwanda, avuga ko urubanza rwajuririwe ari urw'inshinjabyaha, ko kandi n'ubujurire batanze, bushingiye ku rubanza rw'inshinjabyaha, akaba abona nta mpamvu ubushinjacyaha bwakurwa mu rubanza. Yongeraho ko Banki y'Abaturage y'u Rwanda yajuririye ibyo itishimiye muri urwo rubanza rwaciwe abo irega indishyi bakagirwa abere ku cyaha cyari guherwaho hemezwa indishyi, ko iyo ijuririra imbonezamubano gusa, yari kuba ihinduye ikirego kandi bitemewe.

[14] Me Rumenge Nkundimana Victor wunganira Munyaneza na Nyiraguhirwa we avuga ko inzitizi yatanzwe n'ubushinjacyaha ifite ishingiro ko nta mpamvu bugomba guhamagarwa muri uru rubanza kuko ikiburanwa ari indishyi gusa.

[15] Me Gasasira Jean Claude wunganira Nsengiyumva Prosper nawe avuga ko abona nta mpamvu ubushinjacyaha bugomba guhamagarwa muri izi manza, ko ibirego byari bibiri ariko aho urubanza rugeze, ikirego kikaba ari kimwe kijyanye n'indishyi mbonezamubano, ko rero hashingiwe ku ngingo ya 12 y'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko ikirego cy'indishyi kiburanishwa hashingiwe ku mategeko agenga imiburanishirize y'imanza z'imbonezamubano, ubushinjacyaha butagomba kuza muri uru rubanza.

[16] Me Habimana Adolphe wunganira Nabahire Théophile nawe avuga ko yumva nta mpamvu ubushinjacyaha bugomba kuza muri uru rubanza kubera ko icyajuririwe ari ikirebana n'indishyi, akavuga ko ingingo zavuzwe azongeraho ingingo ya 9(2º) y'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko ujurira aba agamije inyungu gusa, ko atazanamo ubushinjacyaha kandi ntacyo abusaba, dore ko na Banki y'Abaturage y'u Rwanda yashoboraga kujurira bamwe gusa abandi ikabareka, bityo akaba abona ubushinjacyaha bwarahamagawe bitagombye, kuko urubanza ruburanishwa ari urw'imbonezamubano rusabwamo indishyi.

[17] Ku byerekeye ingingo ya 187(2º) y'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Me Habimana Adolphe avuga ko abona idasobanutse neza, ko kandi urubanza rwose ruvugwa muri iyi ngingo, bivuze ko umuburanyi uregera indishyi ahera aho urukiko rwagereje agatanga ibimenyetso bigaragaza uruhare rw'uwahanaguweho icyaha, byagira ishingiro, agahabwa indishyi yasabaga. Ko n'ubwo ingingo ivuga ko urubanza rusubirwamo bundi bushya, uregera indishyi niwe utanga ibimenyetso byose kugira ngo abone indishyi, ko asanga ntacyo ubushinjacyaha bwaba buje kumara muri uru rubanza.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 9 y'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko ikirego cy'indishyi ari ikirego gitangwa hagamijwe kwishyuzwa ibyangijwe n'icyaha, ko kiba kigamije gusaba indishyi. Isesengura ry'iyi ngingo ryumvikanisha ko indishyi zisabwa zigomba kuba zuririye ku cyaha cyakozwe zikaba ari ingurane y'ibyangijwe n'icyo cyaha kirimo kuburanishwa, ko kandi icyo kirego gitangwa mu rukiko ruburanisha imanza z'inshinjabyaha ariko kikaba kigamije gusaba indishyi gusa kitarebana n'ibijyanye n'igihano ku cyaha cyakozwe.

[19] Ingingo ya 164 y'itegeko-ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, n'ingingo ya 187 y'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ziteganya ko uregera indishyi ajurira ku bijyanye n'indishyi gusa. Ariko hakongerwamo ko iyo ukurikiranyweho icyaha agizwe umwere, bitabuza uregera indishyi kujurira, ko kandi muri icyo gihe, urubanza rwose rwongera kuburanishwa mu mizi.

[20] Urukiko rurasanga kuba uwari ukurikiranyweho icyaha agizwe umwere bitabuza uwangirijwe n'icyo cyaha kujurira kandi urubanza rukaburanishwa rwose mu mizi, uwajuriye agatanga ibimenyetso bihamya uregwa icyaha byaba ibisanzwe muri dosiye cyangwa se ibindi bishya yaba yungutse, urukiko rukabisuzuma hagamijwe kureba niba uwangirijwe n'icyo cyaha ashobora kwishyurwa indishyi z'ibye byangijwe n'icyaha uregwa yahanaguweho.

[21] Ku kibazo cyo kumenya niba ubushinjacyaha bugomba kuza cyangwa kutaza mu rubanza rusuzuma ubujurire bw'uwaregeye indishyi mu gihe ukurikiranyweho icyaha yagihanaguweho mu rwego rwa mbere, urukiko rurasanga ihame rya mbere ari uko nta rubanza rw'inshinjabyaha rushobora kuburanishwa ubushinjacyaha budahagarariwe.

[22] Urukiko rurasanga kuba uregwa yarahanaguweho icyaha hakajurira uregera indishyi gusa ubushinjacyaha ntibujurire, ibyo bidatuma urubanza ruta kamere yarwo y'urubanza rw'inshinjabyaha ngo ruhinduke urw'imbonezamubano, kuko indishyi zisabwa, zisabwa umucamanza uburanisha imanza z'inshinjabyaha (le juge pénal) kuva mu rwego rwa mbere, mu bujurire akaba agomba kuzitanga ahereye ku bimenyetso yagejejweho n'uregera indishyi amaze kubisuzuma akabiha agaciro. Ko nubwo urubanza rwaburanishwa hakurikijwe amategeko agenga imanza z'imbonezamubano nk'uko biteganywa n'ingingo ya 12 y'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha , ibyo ntibiruvana mu mubare w'imanza nshinjabyaha kuko nk'uko byavuzwe haruguru, ruba rwaratangiye ari urubanza rw'inshinjabyaha kandi no mu bujurire, umucamanza aba agihamagariwe gusuzuma uruhare rw'uwakoze icyaha ashingiye ku bimenyetso yagejejweho n'uwajuriye bikimushinja, akabiheraho atanga indishyi.

[23] Urukiko rurasanga, rushingiye ku ihame ryavuzwe haruguru ry'uko nta rubanza rw'inshinjabyaha rushobora kuburanishwa ubushinjacyaha budahagarariwe, no kuba urubanza mu bujurire ruba rucyambaye umwenda w'urubanza nshinjabyaha, ari ngombwa ko ubushinjacyaha buruzamo nk'umuburanyi nkuko bujya mu zindi manza z'inshinjabyaha, kugirango mu gihe bikenewe bube bwagira icyo bwungura urukiko mu itangwa ry'ibimenyetso n'uwaregeye indishyi.

[24] Urukiko rurasanga ibi kandi, itegeko-ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko mu ngingo yaryo ya 164, n'itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha mu ngingo yaryo ya 187, ayo mategeko yombi abishimangira aho muri izo ngingo zayo hateganyijwemo ko iyo

uregwa agizwe umwere, uregera indishyi akajurira, urubanza rwose rwongera kuburanishwa mu mizi.

[25] Urukiko rurasanga ibikubiye muri izi ngingo byumvikanisha ko ubushinjacyaha bugomba guhagararirwa muri izi manza, kubera ko Urukiko rwongera gusuzuma urubanza mu mpande zarwo zose, haba kurw'imikorere y'icyaha no ku rw'indishyi, rusuzuma uruhare rw'uregwa wagizwe umwere kugira ngo urwo ruhare rube arirwo ruherwaho mu kugena indishyi mu gihe rusanze ruhari.

[26] Urukiko rurasanga rero hakurikijwe ibimaze kuvugwa, mu manza zajuririwe n'uregera indishyi uregwa yaragizwe umwere mu rwego rwa mbere, Ubushinjacyaha bugomba kuzizamo kugirango bibabye ngombwa bugire igitekerezo butanga.

[27] Kuri iki kibazo, abahanga mu mategeko nka Henri-D. Bosly na Damien Vandermeersch mu gitabo cyabo "Droit de la Procédure Pénale, la charte, 4ème édition, 2005, page 1425" bagize icyo bakivugaho. Bavuga ko iyo mu manza z'inshinjabyaha ubujurire bushingiye ku ndishyi gusa, Ubushinjacyaha budategetswe kugira igitekerezo butanga muri urwo rubanza (Lorsque l'appel ne porte que sur l'action civile, le ministère public n'est pas tenu de donner un avis sur cette action).

[28] Urukiko rurasanga aba bahanga icyo bavuga, ari uko mu manza zikomoka ku bujurire bw'uregera indishyi mu gihe uregwa yagizwe umwere mu rwego rwa mbere, Ubushinjacyaha buba buzirimo nubwo budategetswe kugira icyo buvuga, ariko ntibiba binabujijwe kugira igitekerezo butanga.

[29] Urukiko rurasanga hashingiwe ku bimaze kuvugwa, nta mpamvu yatuma Ubushinjacyaha butaza mu manza zisuzuma ubujurire bw'uregera indishyi mu gihe uregwa yagizwe umwere ku rwego rwa mbere.

III. ICYEMEZO CY'URUKIKO

[30] Rwemeje ko inzitizi yatanzwe n'Ubushinjacyaha, nta shingiro ifite;

[31] Rwemeje ko iburanisha ry'urubanza rizakomeza mu mizi ku wa 10/02/2014;

[32] Rutegetse ko amagarama y'urubanza asubitswe.