UBUSHINJACYAHA v. MANIRAGABA

[Rwanda URUKIKO RW'IKIRENGA – RPAA0257/10/CS (Hatangimbabazi, P.J., Karimunda na Munyangeri, J.) 11 Nzeri 2015]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Uruhurirane rw'ibimenyetso – Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinja cyangwa bishinjura ari byo kandi bishobora kwemerwa – Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 86.

Amategeko mpanabyaha – Gusambanya umwana – Imibonano yose mpuzabitsina cyangwa ishingiye ku bitsina ikorewe umwana uko yaba ikozwe kose, n'icyaba cyakoreshejwe cyose, ni icyaha cyo gusambanya umwana – Itegeko Nº27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, ingingo ya 33.

Incamake y'ikibazo: Uregwa yakurikiranywe n'Ubushinjacyaha mu Rukiko Rwisumbuye rwa Musanze, ku cyaha cyo gusambanya umwana ufite imyaka 17 y'amavuko. Urwo Rukiko rwamuhamije icyo cyaha, rumuhanisha igifungo cy'imyaka 20 n'ihazabu ya 100.000Frw, rusobanura ko agabanyirijwe ibihano kubera ko yemera icyaha akagisabira n'imbabazi. Byatumye ajuririra mu Rukiko Rukuru, Urugereko rwa Musanze, narwo rwemeza ko ubujurire bwe nta shingiro bufite, rwemeza kandi ko ikirego cy'indishyi cya nyina w'umwana wasambanyijwe gifite ishingiro kuri bimwe, rutegeka uregwa kumwishyura 200.000Frw y'indishyi.

Uregwa yajuriye mu Rukiko rw'Ikirenga avuga ko yemera ko yasambanye na N.A, babyumvikanyeho, nyuma akaza kumenya ko uwo mukobwa yaje afite umugambi wo kuryamana nawe kubera inda yari afite, akavuga ko asaba imbabazi z'uko yaryamanye n'uwo mukobwa, uyu amusembuye, ndetse amutunguye, kandi ko icyo gihe yari afite imyaka 18 cyangwa ayirengeje.

Uhagarariye Ubushinjacyaha we yavuze ko ku kibazo cy'imyaka ya N.A, hari "attestation de naissance" ye igaragaza ko yavutse ku wa 03/03/1990, hakaba hari n'indangamuntu ya nyina iriho urutonde rw'abana yabyaye igaragaza ko yavutse mu mwaka wa 1990, ko rero Urukiko rudakwiye kwemera ibyo uregwa avuga by'uko uwo mukobwa yavutse mu mwaka wa 1988, mu gihe "fiche individuelle" ashingiraho ikemangwa kuko itujujwe mu buryo bwuzuye, ikaba idasa na za "attestations" zitangwa mu gihugu hose, ndetse n'uwayisinye akaba atari Umuyobozi w'Umurenge, ahubwo ari uwasinye mu mwanya we (P.O). Nyina w'umwana wasambanyijwe we yavuze ko yagiye mu buyobozi bw'Umurenge, bukamuha icyemezo cy'amavuko cy'umwana we, ko kandi amaze kugitanga mu Rukiko.

Incamake y'icyemezo: 1. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinja cyangwa bishinjura ari byo kandi bishobora kwemerwa.

2. Nyuma yo gusesengura ibimenyetso bitandukanye, Urukiko rurasanga N.A yarasambanyijwe n'uregwa ataruzuza imyaka 18 y'ubukure, bityo ibyo kuvuga ko basambanye babyumvikanyeho bikaba bitahabwa agaciro kuko bigaragara ko yakoresheje amayeri kugirango asambanye uriya mwana yarushaga ubwenge, kuko imibonano yose mpuzabitsina cyangwa ishingiye ku bitsina ikorewe umwana uko yaba ikozwe kose, n'icyaba cyakoreshejwe cyose ari icyaha cyo gusambanya umwana.

Ubujurire nta shingiro.

Urubanza rwajuririwe ntiruhindutse.
Amagarama ahereyeye ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 86.
Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119.
Itegeko Nº27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, ingingo ya 33.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwareze Maniragaba Eugène mu Rukiko Rwisumbuye rwa Musanze, rumukurikiranyeho icyaha cyo gusambanya umwana witwa N.A ufite imyaka 17 y'amavuko. Urwo Rukiko rwamuhamije icyo cyaha, rumuhanisha igifungo cy'imyaka 20 n'ihazabu ya 100.000Frw, rusobanura ko agabanyirijwe ibihano kubera ko yemera icyaha akagisabira n'imbabazi.

[2] Maniragaba Eugène yajuririye mu Rukiko Rukuru, Urugereko rwa Musanze, uru Rukiko rwemeza ko ubujurire bwe nta shingiro bufite, rwemeza kandi ko ikirego cy'indishyi cya Nyirarugendo Madeleine, nyina wa N.A, gifite ishingiro kuri bimwe, rutegeka Maniragaba Eugène kumwishyura 200.000Frw y'indishyi.

[3] Maniragaba Eugène yajuririye Urukiko rw'Ikirenga, urubanza ruburanishwa mu ruhame ku wa 11/05/2015, iburanisha risozwa ku wa 13/07/2015, Maniragaba Eugène yunganiwe na Me Mbonyimpaye Elias, uregera indishyi N.A ahagarariwe na nyina Nyirarugendo Madeleine yunganiwe na Me Kayirangwa Marie Grace, naho Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba N.A yarasambanyijwe na Maniragaba Eugène afite imyaka y'ubukure.

[4] Maniragaba Eugène avuga ko yemera ko yasambanye na N.A ku wa 27/02/2008, babyumvikanyeho, ko icyo gihe yaje iwe kumureba, amubwira ko aje kumuhemba kubera ko yigeze kumuherekeza, akaba yaramubwiraga ko yakomeje kumushaka akamubura.

[5] Akomeza avuga ko yaje kumenya ko uwo mukobwa yaje afite umugambi wo kuryamana nawe kubera inda yari afite, ko kandi hari agatsiko kari kabyihishe inyuma karimo Umuyobozi w'Akarere ka Gakenke yakoreraga. Avuga ko asaba imbabazi z'uko yaryamanye n'uwo mukobwa, uyu amusembuye, ndetse amutunguye, kandi ko icyo gihe yari afite imyaka 18 cyangwa ayirengeje.

[6] Ku kibazo cy'iyo myaka ya N.A, Maniragaba Eugène avuga ko muri dosiye harimo icyemezo cye cy'amavuko kivuga ko yavutse mu mwaka wa 1990, kikanavuga ko yari umunyeshuri (élève), nyamara yari yararivuyemo mu mwaka wa 2006, byongeye kandi muri dosiye hakaba harimo ikindi cyemezo cy'amavuko kivuga ko yavutse ku wa 03/03/1990, iki kikaba cyaratanzwe hashingiwe ku ndangamuntu ya Nyirangorore Anastasie iteye amakenga.

[7] Maniragaba Eugène avuga ko yabonye ibyo byemezo bidasobanutse, yandikira Ubuyobozi bw'Umurenge kugirango butange icyemezo cy'ukuri, nabwo bumusubiza ko badashobora kugiha umudamu we yari yatumye, aribwo yifashishaga umwanditsi w'urukiko, uyu akaba ariwe ubwe wazanye "fiche individuelle" ahawe n'Ubuyobozi bw'Umurenge igaragaza ko N.A yavutse mu mwaka wa 1988, ariko Urukiko rukaba rutarabihaye agaciro, ariyo mpamvu yongeye gusaba ko hagaragazwa "registre des actes de naissance". Avuga ko ariko n'ubwo iyo "registre des actes de naissance" itaboneka, akomeza kwemeza ko yasambanyije N.A atari umwana, ko kandi atari we wamuteye inda yari asanzwe afite igihe baryamanaga.

[8] Me Mbonyimpaye wunganira Maniragaba Eugène avuga ko hari ibimenyetso bibiri bigaragaza imyaka itandukanye ya N.A, ikimenyetso cya mbere kikaba icyo kuba Maniragaba Eugène ubwe yarishakiye icyemezo cyavuye ku Buyobozi bw'Umurenge kivuga ko yavutse mu mwaka wa 1988, ariko Urukiko ntirubihe agaciro, ahubwo rugaha agaciro icyazanywe na N.A cy'uko yavutse mu mwaka wa 1990, akaba asanga ibyo byemezo bibiri bivuguruzanya bitera gushidikanya ku myaka y'ubukure bwa N.A.

[9] Uhagarariye Ubushinjacyaha avuga ko ku kibazo cy'imyaka ya N.A, hari "attestation de naissance" ye igaragaza ko yavutse ku wa 03/03/1990, hakaba hari n'indangamuntu ya nyina iriho urutonde rw'abana yabyaye igaragaza ko N.A yavutse mu mwaka wa 1990, ko rero Urukiko rudakwiye kwemera ibyo Maniragaba Eugène avuga by'uko uwo mukobwa yavutse mu mwaka wa 1988, mu gihe "fiche individuelle" ashingiraho ikemangwa kuko itujujwe mu buryo bwuzuye, ikaba idasa na za "attestations" zitangwa mu gihugu hose, ndetse n'uwayisinye akaba atari Umuyobozi w'Umurenge, ahubwo yarasinye P.O.

[10] Akomeza avuga ko ibyo Maniragaba Eugène aburanisha by'uko yasambanyije N.A uyu ari we umusembuye ari amagambo gusa kuko atabitangira ibimenyetso. Asaba urukiko ko rwazashingira kuri raporo ya muganga (rapport médical) aho igaragaza ko uwo mukobwa yasambanyijwe mu mwaka wa 2007 atarageza ku myaka 18.

[11] Nyirarugendo Madeleine, nyina wa N.A nawe yahawe ijambo, avuga ko yagiye mu Buyobozi bw'Umurenge, bukamuha icyemezo cy'amavuko cy'umwana we, ko kandi amaze kugitanga mu Rukiko, Maniragaba Eugène yanditse urwandiko asaba N.A imbabazi, amubwira ko umwana azabyara bazafatanya kumurera, ndetse icyo gihe akaba yaramuhaye 25.000Frw.

[12] Mu rwego rwo kuvanaho urujijo ku myaka ya N.A, Urukiko rwafashe icyemezo cy'uko Ubushinjacyaha buzajya mu Murenge watanze ibyo byemezo byombi, bugasobanuza ukuntu ibyemezo bibiri byatanzwe n'Ubuyobozi bw'Umurenge umwe bidahuye.

[13] Nyuma y'iryo perereza ryategetswe n'Urukiko, Ubushinjacyaha bwarumenyesheje ko bwasanze icyemezo cy'amavuko cya N.A gihura n'icyo bwatanze mbere muri uru rubanza, cyerekana ko yavutse ku wa 03/03/1990, ndetse iyo myaka ikaba ihura n'iy'amavuko iri ku ndangamuntu no ku ikarita ye ya batisimu, noneho mu iburanisha ryo ku wa 13/07/2015, busaba ko icyemezo cyatanzwe na Maniragaba Eugène cyateshwa agaciro.

[14] Maniragaba Eugène avuga ko atemera ibyo Ubushinjacyaha buvuga, kubera ko bwagiye busaba icyemeza ko N.A yavutse mu mwaka wa 1990, hashingiwe ku ndangamuntu ye aho gushingira kuri "fiche individuelle", akaba yibaza niba N.A yaragize indangamuntu ebyiri. Akomeza avuga ko ifishi ya batisimu itashingirwaho kuko N.A avuka ku babyeyi batabana mu buryo bwemewe n'amategeko, bikumvikanisha ko imyaka bandikishije ishobora kuba idashingiye kuri "fiche individuelle", akaba yifuza nk'uko yakomeje kubisaba, ko hashingirwa kuri "registre des actes de naissance" kugirango urujijo ruveho.

[15] Me Mbonyimpaye wunganira Maniragaba Eugène avuga ko impungenge bagaragaje ubwo urukiko rwafataga icyemezo cy'uko ubushinjacyaha bujya gushaka itariki N.A yavukiye zigifite ishingiro, bitewe n'uko Ubushinjacyaha ari umuburanyi nkabo, bukaba butarashoboraga gushaka ibimenyetso bibutsindisha, ari yo mpamvu butigeze bubaza "fiche individuelle", akaba asanga rero iperereza ryakozwe n'Ubushinjacyaha ridakwiye gushingirwaho kuko rituzuye mu gihe ryagendeye ku ruhande rumwe, asaba Urukiko kwikorera irindi perereza rijyanye na "fiche individuelle", kuko irangamuntu bagaragaje bavuga ko yatanzwe mu mwaka wa 1980 inyuranya n'icyemezo cyatanzwe n'ubuyobozi kivuga ko N.A yavutse mu kwezi kwa gatatu 1990, nyamara iyo rangamuntu yanditseho ukwezi kwa kabiri. Asoza avuga ko ifishi ya batisimu n'ikarita ya "mutuelle de santé" byo bidakwiye gushingirwaho kuko atari inyandiko z'irangamimerere.

[16] Nyirarugendo Madeleine nawe yongeye guhabwa ijambo avuga ko irangamuntu ye bwite yayibonye mu mwaka wa 1980 avuye muri Zaire, ikaba yari yanditsemo ko N.A yavutse ku wa 20/02/1990, hakaba hari n'ikarita y'ishuri yakozwe ku wa 01/06/2015 igaragaza ko yavutse mu mwaka wa 1990, hamwe n'ifishi ya batisimu kimwe n'ikarita ya "mutuelle de santé" byose bigaragaza ko N.A yavutse mu mwaka wa 1990.

[17] Me Kayirangwa wunganira Nyirarugendo Madeleine avuga ko Urukiko rukwiye guha agaciro ibimenyetso bimaze kuvugwa bigaragaza ko N.A yavutse mu mwaka wa 1990, ndetse rukanashingira ku nyandiko yakozwe na Maniragaba Eugène ubwe aho yemeraga ko yakoreye N.A icyaha, iyo nyandiko ikaba igaragaza ko yakimukoreye azi ko ari umwana.

[18] Ku birebana n'uko indangamuntu ya Nyirarugendo Madeleine idahura neza n'iya N.A, avuga ko byatewe no kwibeshya, bitewe n'uko irangamuntu afite handitseho imyaka gusa, ariko ko iyo afite ya kera hakaba handitsemo igihe N.A yavukiye (ukwezi), akaba asaba ko ari yo yashingirwaho.

UKO URUKIKO RUBIBONA

[19] Urukiko rurasanga n'ubwo mbere hose kuva mu Bugenzacyaha, mu Bushinjacyaha, no mu Rukiko rubanza, Maniragaba Eugène yakomeje guhakana atsemba ko atigeze asambanya N.A, ikigaragara ni uko yahinduye noneho imiburanire ye ageze mu Rukiko rw'Ikirenga, akavuga ko yemera ko yasambanye n'uwo mukobwa, ko ariko atari umwana nk'uko bivugwa n'Ubushinjacyaha, ko ahubwo yari mukuru, kuko yavutse mu mwaka wa 1988, icyaha aregwa kigakorwa mu mwaka wa 2007, bityo rero ngo akaba yari mukuru, kuko yari afite imyaka cumi n'umunani 18. Yongeraho kandi ko yaryamanye na N.A babyumvikanyeho, ko ariko atari we wateye inda uwo mukobwa avuga ko afite.

[20] Ku kibazo cyo kumenya niba koko N.A yari mukuru, Urukiko rurasanga hari urwuzuzanye rw'ibimenyetso biri muri dosiye y'uru rubanza bigaragaza ko N.A yavutse mu mwaka wa 1990, birimo:

Irangamuntu ye igaragaza ko yavutse ku wa 03/03/1990;

Icyemezo cy'umwirondoro wuzuye wa N.A (attestation d'identité complète) cyatanzwe n'umunyamabanga nshingabikorwa w'umurenge wa mugunga ku wa 07/05/2008, kigaragaza ko yavutse mu mwaka wa 1990;

Icyemezo cy'amavuko (attestation de naissance) cyatanzwe ku wa 27/05/2015, n'umunyamabanga nshingwabikorwa w'umurenge wa Mugunga, ubushinjacyaha bukagishyikiriza uru rukiko nk'uko bwari bwabisabwe, kigaragaza ko N.A yavutse ku wa 03/03/1990.

Ikarita ya batisimu ya N. A n'ikarita ye ya "mutuelle de santé" byose bigaragaza ko yavutse mu mwaka wa 1990.

[21] Ingingo ya 86 y'Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha hamwe n'iya 119 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ziha uburenganzira umucamanza bwo gusesengura ibimenyetso byose ashyikirijwe mu rubanza rw'inshinjabyaha, aho zivuga ko ibimenyetso bishobora gushingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barabigiyeho impaka, ko Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinja cyangwa bishinjura ari byo kandi bishobora kwemerwa[1].

[22] Hasesenguwe ibiteganywa n'ingingo zimaze kuvugwa, Urukiko rurasanga ibyo Maniragaba Eugène aburanisha byo guhakana inyandiko zose zavuzwe haruguru, agashaka ko hashingirwa kuri "fiche individuelle" yishakiye ngo igaragaza ko N.A yavutse mu mwaka wa 1988 nta shingiro bifite, kuko atagaragaza uburyo iyo"fiche individuelle" ishobora kuvuguruza ibimenyetso bimaze kuvugwa haruguru, byongeye kandi akaba atagaragaza uburyo ziriya nyandiko zaba zatanzwe zigamije guhindura igihe N.A yavukiye, ku bw'iyo mpamvu zikaba zigomba gufatwaho ukuri mu kwemeza koko ko N.A yavutse mu mwaka wa 1990.

[23] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga N.A yarasambanyijwe na Maniragaba Eugène ataruzuza imyaka 18 y'ubukure, bityo ibyo kuvuga ko basambanye babyumvikanyeho bikaba bitahabwa agaciro kuko bigaragara ko Maniragaba Eugène yakoresheje amayeri kugirango asambanye uriya mwana yarushaga ubwenge, ibyo rero nabyo bikaba bigomba kwitwa gusambanya ku gahato.

[24] Ibyo kandi bihuza n'ibiteganywa n'ingingo ya 33 y'Itegeko Nº27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, iteganya ko "imibonano yose mpuzabitsina cyangwa ishingiye ku bitsina ikorewe umwana uko yaba ikozwe kose, n'icyaba cyakoreshejwe cyose, ari icyaha cyo gusambanya umwana".

[1] Ingingo ya 86 y'Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ibikurikira:"Ibimenyetso bishobora gushingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barabigiyeho impaka. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinja cyangwa bishinjura ari byo kandi bishobora kwemerwa".
Ingingo ya 119 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa iteganya ibikurikira: "Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa".

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ubujurire bwa Maniragaba Eugène nta shingiro bufite;

[26] Rwemeje ko urubanza rwajuririwe RPA0241/09/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, rudahindutse;

[27] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.